Term. Dec. 1873. 20 Field J
affirmed
Bradley J.
Swayne J.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~422.~~ 1144

JOHN KIELEY AND MARY KIELEY, HIS WIFE; GEORGE WILSON AND ANN WILSON, HIS WIFE; AND ELLEN LYNCH, APPELLANTS,

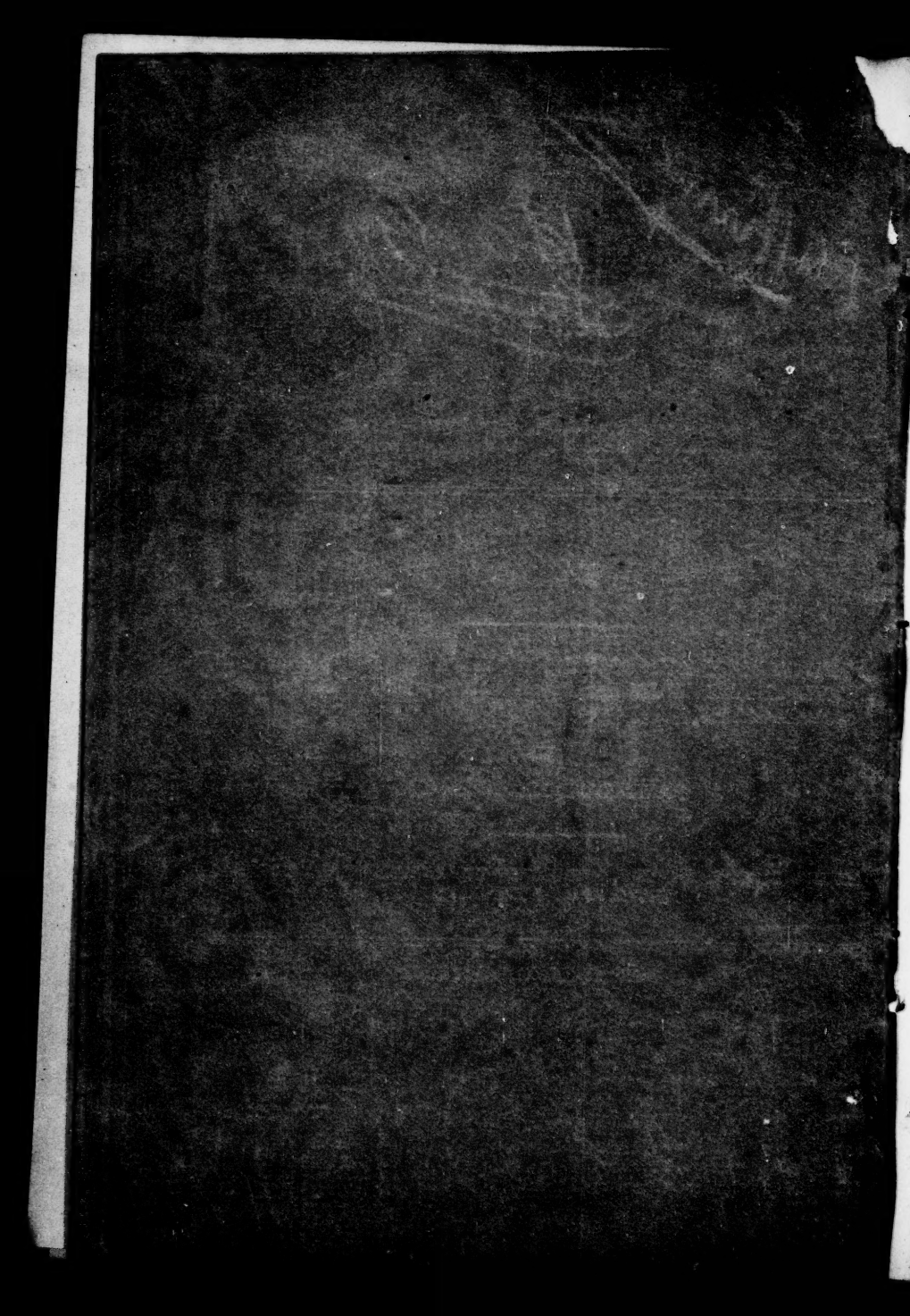
vs.

JOHN A. McGLYNN ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

FILED APRIL 7, 1873.

Oct. 2. 1874



SUPREME COURT OF THE UNITED STATES.

No. 422.

JOHN KIELEY AND MARY KIELEY, HIS WIFE; GEORGE WILSON AND ANN WILSON, HIS WIFE; AND ELLEN LYNCH, APPELLANTS,

vs.

JOHN A. McGLYNN ET AL.

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a UNITED STATES OF AMERICA, *ss:*

To John A. McGlynn, David Jones, John Wool, Isaac Lankershim, Reuben Morton, John Murphy, Ann Purcell, T. Palmer, J. Higgins, P. Cullen, T. McManus, Patrick Linehan, John Connor, Mary Levine, Edward McGarry, S. C. Hastings, F. F. McManus, Margaret McMillan, Rose Glancey, J. Aaron, H. Moynehan, M. Tarpey, Patrick Hay, Sophia J. Vandewater, executrix of estate of R. J. Vandewater, deceased, F. Fagan, Jertham Regan, Henry Casey, John Carroll, D. Hayes, J. M. Cleaveland, C. G. Hughes, T. M. Roach, Nicholas Campbell, T. J. Moynihan, W. W. Haney, Bernhard Gattel, R. Garratt, Alexander Hoy, D. H. Walton, Sam. Morganstern, Adolph Kaskell, C. Nobmann, William Bunce, J. S. Butters, A. B. Richardson, Samuel A. Morrison, P. E. Brady, C. S. Moulton, B. Grier, Patrick Troy, E. A. Litchfield, W. K. Dietrich, James J. Gardner, P. McAran, J. J. Reichenbach, A. J. Donzll, Charles Baum, "American Russian Commercial Company," B. S. Fitch, John Wigmore, Frederick Billings, Eugene Kelly, Jane E. Johnson, O. H. Keyes, Benjamin Smith, W. J. Lawy, Julius George, John Pershbaker, Charles Meyer, William R. Garrison, "Union Lumber Association,"
b John L. Gardner, C. P. Head, David D. Colton, David Mahoney, James R. Dickey, B. S. Brooks, John B. Felton, James Houston, O. C. Breed, John Middleton, F. Read, E'd Franklin, James Creamer, Michael Reilly, A. C. Wass, A. W. Manning, estate of J. W. Bean, deceased, John H. Morehouse, D. Bloom, X. F. Scherr, Kennedy, J. Boucher, A. C. Whitcomb, H. Ferguson, H. Hilgoth, J. Mahoney, C. Mahoney, W. A. Grover, J. Riordan, Robert Hazard, A. Mogan, J. Mogan, Caroline Jones, Gendér, Edward Megrath, B. F. Ames, J. H. Kelly, James Lyng, Jeremiah Maloney, Ann French, Ann Duffy, Samuel Crim, John Center, Isaac Wiley, Ellen Douglass, J. O'Brien, J. Lange, Charles S. Haley, J. Sturtevant, M. N. Thurston, M. Andrews, J. Vaughn, Allen Lee, J. J. Moore, Michael Lane, D. S. Witherly, Thomas J. Welsh, John Knownburg, James Kenney, A. Livingston, Patrick Sullivan, Thomas Peyser, J. H. Hoadley, J. W. Rule, Oscar D. E. Lewis, C. Cramer, Thomas Swanton, James Thorn, S. A. Vance, Sarah Ensey, R. Bradshaw, James Behan, W. W. Taylor, C. L. Hall, William Waid, Thomas Golden, Margaret Downing, C. Hubbell, John Comerford, Hugh Kennedy, William Dakin, Henry Chester, Peter Burns, L. Dwyer, Charlotte F. Gordon, Robert Lane, C. D. Hoyt, J. A. McGovern, T. Pendergast, Robert Mellon, C. M. Beckler, Thomas
c Cusick, H. T. Lynch, Thomas Emery, S. S. Sprague, William Hamphire, A. Mills, J. R. Deardoff, Catharine Harvey, Joseph Sullivan, H. H. Noble, C. E. Lang, C. L. Wardell, William Bluett, D. C. Dunn, Peter Dunn, H. C. Flowers, O. E. Johnson, James Forbes, Thomas Connell, James Hamilton, James G. Holmes, T. S. Russell, Joseph Gerze, Thomas McDonough, Rosalie Straub, D. Cavanaugh, Thomas H. Porter, John C. Piercy, Louis Zeh, H. Mohan, William Freeborn, L. Roche, E. Roche, William McGarren, T. Norton, Edward Barry, H. D. Lathrop, Margaret Coney, W. R. York, M. Douglass, B. McLaughlin, A. Schenck, S. A. Vance, Andrew McManus, C. H. Cordes, Patrick Dempsey, A. Herbert, William McCormick, Maria Byron, Jane Clinton, J. W. Farren, William Sparks, Peter Barker, Thomas Phillips, John Brodie, Hugh Dolan, John Turnbull, W. H. Pierson, W. Sutton, J. Harkins, J. Malone, W. Barry, J. J. Dixon, T. Morton, George S. Crim, A. Bryan, Catherine

Kenny, John Shea, M. Burns, W. McMahon, Daniel Shea, Margaret Harlock, Thereasa Dirks, John Cannon, J. Orr, James Kelly, F. McGlancy, M. Kiernan, James McDonough, A. J. Rutherford, John Cunninghim, D. H. Kearny, F. Odermatt, James Lang, W. A. Cory, Charlotte Watts, T. J. Kimball, Patrick R. Hanna, Richard Haynes, Robert T. Browne, Mary Sweeney, James Sullivan, Alexander
d Haney, David M. Kelton, David Thessereau, F. Sullivan, P. O'Brien, J. G. McEvoy, Patrick Haynes, John McBride, Pierre Blick, William Shackleton, Neil Barr, Joseph Pepin, Margery Bradley, James Dougherty, M. McLaughlin, Thomas Peterson, John Downey, P. McDermott, A. Amundsen, Daniel Sullivan, Dennis Sullivan, George Schuerg, Daniel Keefe, John R. Conway, D. McMullan, John D. Dement, Thomas Emery, J. H. Pickens, R. T. Delano, Francis R. Kelly, C. H. Chamberlain, T. W. Walker, Catherine Curley, H. Anderson, W. Worfot, Joseph Lelong, John Twohig, C. F. Russer, Bart. Crowley, R. C. Markel, P. R. O'Brien, A. Kurtz, John Meagher, Thomas G. Maguire, W. C. Ralston, John Phillips, John F. Sullivan, Dennis Gorman, Morris Sheahan, Clark Churchill, P. Shenkel, B. E. Arnold, Robert White, Eugene Casserly, Margaret Coleman, H. P. Gallagher, J. S. Alemany, George Kaie, Ellen Mulhearm, Margaret Finlin, W. H. Sansome, John Gross, Robert Hill, Joseph Kelly, James O'Shea, T. Noonan, Charles Krause, J. Palmer, George Hermann, John C. Meyer, H. H. Shortmeier, L. F. Hoadley, William Cruse, J. G. Perkins, John Tenney, C. Sullivan, M. Connell, George T. Davis, Tim. Downey, John Brown, James Sulli-
e van, Dennis Brady, George E. Darling, H. A. Cobb, M. McGaughran, Margaret McKeon, Bridget Bushman, A. Schuminsher, Hannah McAnnally, W. Laplain, M. Collins, H. A. Benjamin, Peter Johnson, Robert Keefe, Patrick Angleer, Mary A. Murray, Mary Piratski, George Moore, Mary McSweeney, Daniel Burns, Elizabeth Murray, J. F. Hannagan, Ann Winn, Lawrence Tilby, W. H. Pritchard, Mary E. Nelson, F. N. Bellisle, Hugh Dolan, Patrick Kelley, John Fennessy, Thomas Mooney, Alice Cahill, Tim. Driscoll, Ellen Sullivan, Luke Hackett, Alice Moss, Charles McPhillany, D. Fennessy, Joseph Quigley, Mary Ash, Lawrence Higgins, James Murphy, Frederick Buel, Frank McConnolly, L. Altschell, John Hahn, E. D. Carter, William L. Murphy, Adolph C. Weber, John Schant, Jacob Price, John L. Durkee, R. H. Monck, M. Kerr, Michael Powers, M. Roux, S. A. Winall, J. W. Crawford, C. S. Capp, John H. Turney, James T. Boyd, Lucius A. Booth, John Taylor, John Kehoe, William Cushman, W. H. Davis, Eben W. Park, F. Kilpatrick, John Kane, Thomas Smith, John M. Todd, Stanhope Dickinson, Job Bigwood, John Agnew, Ellen Regan, Hannah Robson, Thomas Kelly, Peter G. Peltret, William Corbett, John Treat, Kate Hann, M. O'Connor, Thomas Finnegan, Charles Kellett, Mary Cro-
f well, Charles P. Gibbons, Mary Ann Murphy, John B. Brophy, J. B. Miller, Mary Ann Winall, A. U. Davis, Ira McGray, Elisha Presby, John McGeary, T. J. Winship, Andrew Russell, David Russell, A. Esnault, Mary Phillips, George S. Kittredge, Thomas Byrne, Joseph Boardman, City and County of San Francisco, J. Levy, Omnibus Railroad Company, Murray, Noble, Rose W. Crow, Edward Llewelling, Edward Sweeney, John B. Goldstone, C. McManus, Daniel McCarthy, E. B. Kingsley, George H. Parker, E. R. Harris, J. B. Murphy, Thomas Cummings, Constantine Muller, George W. Morse, Charles Smith, Henry Fiege, James Clinton, S. M. Wilson, James Peterson, James H. Reynolds, W. McKinney, W.

Wolf, J. N. Finch, J. Morris, John Collin, Helena Dieterle, E. A. Reese, G. Blau, Samuel McCullough, John O. Earl, W. Irwin, J. B. Fry, E. Pestner, W. Welsh, Winslow, Williams, N. S. Arnold, J. G. Kittredge, John Hannigan, William Dick, Anna E. Smith, E. Sutherland, Jacob Rauch, Mrs. L. A. Mowry, William Saura, Augustus Roberts, Henry Arrison, Bridget Mulharen, E. W. Park, John M. Tully, estate of Robert Beatty, P. J. Postel, Edward A. Hagan, R. B. Cheeseman, N. E. Carr, Joseph Tuttle, John Regan, John D. Wilson, Josiah Moulton, John M. Shotwell, C. M. Hitchcock, H. Leonard, Henry Doscher,
g C. F. Swett, R. Finley, Thomas Wyatt, Daniel Hicks, B. H. Schunboff, Henry Mess, Donald Grant, B. Joost, Schepper, T. D. Sullivan, S. W. Dick, Hoyt, Sears, O. T. Giffin, W. H. Graves, E. R. Harris, P. Verplanck, Ellen Crocker, A. W. Stone, William Walsh, Arrie Van Wie, George Treat, Henry Harms, B. Larigan, Samuel Weilheimer, C. Schwartzwalter, Washington Bartlett, Henry C. Somers, Harvey T. Kellom, H. S. Wheeler, S. D. Denny, Antoine Borel, Alfred Borel, Lafayette Carpenter, L. H. Bonestell, A. Kohler, Thomas McKinstry, Henry Christie, Ann B. Whetton, L. Englander, T. J. Reddish, Edward Denny, S. W. Dick, Patrick Cleary, Francis D. Cleary, Helen M. Benton, J. H. Pohlker, Harvey Hall, A. B. Richardson, Cordelia Raimond, George Davidson, Margaret R. DeLange, J. C. Parkinson, Thomas Noonan, H. K. Curtis J. E. Steckler, D. A. Lancaster, E. J. Blanding, Charlotte R. Mozer, Patrick Doyle, Sumner J. Record, Frances Haraszthy, Henry S. Brooks, W. E. Domett, James McDevitt, F. Mozer, L. A. Booth, Sarah J. Barber, H'y A. Crane, P. Schwerdh, G. M. Bockius, Hiram C. Buster, E. C. Quenel, James McKew, E. Bauer, John P. Hawkins, F. Joost, H. H. Ellis, Tullis Argenti, James Devoe, jr., S. Linkton,
h Annie M. Winter, J. S. Morgan, C. S. Holmes, Howard Chapman, A. Rutherford, Lewis Soher, "San Francisco and San José Railroad Company," E. H. Doyle, Robert White, John Schroeder, A. B. Winegar, Thomas H. Zeigenfuss, Eleanor Deliese, C. Moneypenny, S. B. Watson, John C. Klumpke, J. C. Collins, G. Hudson, Horton, Mulford, H. J. Morton, Mary White, N. E. Hawley, R. P. Clement, N. Wynne, Mary Park, John M. Peck, J. B. Brown, H. H. Bodwell, J. E. Knowles, E. L. Mayberry, W. Murray, J. W. Fuller, Samuel Brunt, F. P. McMahon, Mary T. Klopenstine, John D. Wilson, Josiah Moulton, M. D. Heckman, Peter Carter, P. J. Kennedy, P. C. Fogarty, G. W. Bell, estate of Peter Johnson, L. W. Sawyer, A. E. Tate, W. K. Vanderslice, E. A. Wilson, Francis Blake, James Moffatt, R. Doyle, Charles A. Barnes, William Matheson, E. L. Montgomery, Mary Boyle, R. E. Davis, Charles Lauterwasser, Jeanette Harley, Asa Harker, Michael Fay, Catherine Parkinson, A. C. Bonnell, Peter Bunty, Emma C. Davis, Patrick Collens, S. G. Worden, Thomas H. Douglass, John Taylor, J. J. Bauer, Lydia Morton, Daniel Graham, Samuel Foster, J. Hamilton, J. A. Snook, Edward Worth, John Kearn, Johanna Wyman, Laurence Dunn, Joseph Moore, Isaac H. Small, D. J. McCarthy, David B. Brown, H. W. Hathorne, J. Curley, Julia Cahalan, John Hart,
i John Hahn, J. F. Johnson, City and County of San Francisco, Board of Commissioners of Fire Department, R. White, P. Reilly, Andrew Miley, (or Andrew Wiley,) James O'Donnell, Joseph Hughes, H. A. Crane, Cyrus D. Hoyt, Owen McCloskey, H. L. Davis, H. Maras, Mrs. C. U. Mann, James Roland, E. Held, Antoinette Steiger, Mary Sullivan, M. M. Flint, Michael McDowell, John Scarry,

Emily Barron, W. Hawxhurst, George Whitney, Peter Postel, William Koch, Edward McKee, Edward Nelligan, R. McCram, Mary Lincoln, Rose Ann McKinley, J. H. Hammond, N. C. Parish, A. Kopenstine, John Heron, Albert Lawson, John W. Hayden, William Phillips, Patrick Winn, R. P. Clement, Clara Carre, Susan M. Hawkins, A. J. Smith, D. Hanlon, Joseph Windrow, Burke Perry, S. Aitken, Janet Harley, Mary Quirk, C. L. Lauterwasser, C. Hellwig, Charles Gay, Charles Poppe, John Manchester, Rufus Parker, W. L. Smith, Matthew Whitton, William Mitchell, Robert Pyne, Henry Somers, Edward Denny, John B. Wilson, Edward B. Schwerlry, R. W. Mitchell, Peter Burns, Henry Rumpe, Michael Walsh, F. J. Sullivan, Peter Blick, A. C. Gay, Peter O'Brien, Michael McGorry, Edward F. Drew, Charles Krause, Roger Donohue, Charles Kelley, Patrick Mulligan, C. Jacobson, L. Blumen, Elizabeth Carvahlo, John D. Wanz, Adeline Perrin, R. R. Swain, Julian Harris, Margaret Burns, Claus
j Caspar, Nathan Simons, Herman Minot, Thomas Mitchell, C. Collins, Nelson Rock, John Manton, Filoy Laurens, William Doyle, John Hogan, Michael Keran, Charles J. Bush, Timothy S. Kelly, Thomas Maguire, and Salvo Brinkhart.

You are hereby cited and admonished to be and apppear at a Supreme Court of the United States of America, to be held at the city of Washington, in the District of Columbia, on the third Monday of February, A. D. 1873, pursuant to an appeal duly had and perfected from the final decree of the circuit court of the United States for the district of California, in the ninth judicial circuit, in a suit in equity, wherein John Kieley, and Mary Kieley, his wife, in her right, George Wilson, and Ann Wilson, his wife, in her right, and Ellen Lynch, are complainants and appellants, and you are defendants and appellees, to show cause, if any there be, why the decree mentioned in the order of said court, in said suit, granting an appeal, should not be corrected, and speedy justice done to the parties in that behalf.

Witness the honorable Salmon P. Chase, Chief Justice of the United States Supreme Court, this 16th day of December, A. D. 1872, and of the Independence of the United States of America, the ninety-seventh.

[SEAL.] LORENZO SAWYER,

k *United States Circuit Judge, 9th Judicial Circuit.*

Service of the foregoing citation admitted this 27th day of January, A. D. 1873, waiving nothing.

S. M. WILSON,
For certain Defendants.
HOYT & SEARS,
For certain Defendants.

Service of foregoing citation is hereby admitted this 27th day of January, 1873.

R. AUG. THOMPSON,
Solicitor for Theresa Dirks, James Orr, et al.
JABOTH CLEMENT,
Sol'c'r for Kohler, et al.
C. WITTRAM, *for F. Buel.*
ISAAC BAGGS,
Solicitor for Francis Reed.

1 Service of foregoing citation admitted this 27th day of January, A. D. 1873.

SHARPSTINE & HASTINGS,
Sol's for certain Def'ts.
McCULLOUGH & BOYD,
Sol'r for certain Defendants.
SIDNEY V. SMITH & SON,
Sol's for C. Bauer & Am. Russ. Com. Co.
SHARP & LLOYD,
Att'ys for certain Def'ts.
W. H. PATTERSON,
Sol'r for Union Lumber Association.
GEORGE & LOUGHBOROUGH,
Sol's for Julian B. Harris and Julius George.

(Endorsed:) No. 849. U. S. circuit court, district of Cal. John Kieley & al. v. John A. McGlynn & al. Citation. Filed Jan'y 30, 1873. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep. cl'k.

1 *Bill of complaint.*

Circuit court of the United States, district of California. In equity.

JOHN KILEY, AND MARY KILEY, HIS WIFE, IN her right, George Wilson, and Ann Wilson, his wife, in her right, and Ellen Lynch, complainants,
vs.
JOHN A. McGLYNN AND OTHERS, DEFENDants.
} Complaint.

To the judges of the circuit court of the United States for the district of California:

John Kiely and Mary Kiely, his wife, George Wilson and Ann Wilson, his wife, and Ellen Lynch, all residents of Sidney, in New South Wales, and subjects of the Queen of Great Britain and Ireland, bring this their bill of complaint against John A. McGlynn, David Jones, John Wool, Isaac Lankershim, Reuben Morton, John Murphy, Ann Purcell, T. Palmer, J. Higgins, P. Culley, T. McManus, Pat'k Linehan, John Connor, Mary Levine, Edward McGarry, W. H. Taylor, S. C. Hastings, T. F. McManus, Margaret McMillan, Rose Clancey, J. Aaron,
2 A. Moynehan, M. Tarpey, Pat. Hay, estate of R. J. Vandewater, deceased, Sophia J. Vandewater, executrix, T. Fagan, Jertham Regan, Henry Casey, Jno. Carroll, D. Hayes, J. M. Cleaveland, C. G. Hughes, T. M. Roach, Nicholas Campbell, R. C. Atkins, T. J. Moynehan, W. W. Haney, Bernhard Gattell, R. Garrett, Alexander Hoy, D. H. Walton, Sam. Morgenstern, Adolph Kaskell, C. Nobbmann, W'm Bunce, J. S. Butters. G. Y. Loring, A. B. Richardson, Samuel A. Morrison, P. E. Brady, C. S. Moulton, R. Grier, Patrick Troy, E. A. Litchfield, W. K. Dietrich, James J. Gardner, P. McAran, D. Cony, J. J. Reichenbach, A. J. Donzell, Charles Baum, American Russian Commercial Company, Peter G. Patridge, B. S. Fitch, Jno. Wigmore, Frederick Billings, Eugene Kelly, Jane E. Johnson, O. H. Keyes, Benjamin Smith, W. J. Lawy, Julius George, Jno. Pershbaker, Charles Meyher, W'm R. Garrison, Union Lumber Association, W'm J. Adams, pres'd't, John L. Gardner, C. P. Head, David D. Colton, David Mahoney,

James R. Dickey, R. S. Brooks, John B. Felton, James Houston, O. C. Breed, John Middleton, F. Read, Ed. Franklin, James Creamer, Mich'l Reilly, A. C. Wass, A. W. Manning, estate of J. W. Bean, deceased, John H. Morehouse, D. Bloom, X. F. Scherr, Kennedy, J. Boucher, A. C. Whitcomb, H. Ferguson, H. Hilgoth, J. Mahoney, C. Mahoney, W. A. Grover, J. Riordan, Robert Hazard, A. Mogan, J. Mogan, Caroline Jones, Gendér, Edward Megrath, B. F. Ames, J. H. Kelly, James Lyng, Jeremiah Maloney, Ann French, Ann Duffy, Samuel Crim, John Center, Isaac Wiley, Ellen Douglass, J. O'Brien, J. Lange,
3 Charles S. Haley, J. Sturtevant, M. N. Thurston, M. Andrews, J. Vaughn, Allen Lee, J. J. Moore, Mich'l Kane, D. S. Witherly, Thomas J. Walsh, Jno. Knownburg, James Kenney, A. Livingston, Pat. Sullivan, Thomas Payser, J. H. Hoodley, J. W. Bole, Oscar D. A. Lewis, C. Kramer, Thomas Swanton, James Thorn, S. A. Vance, Sarah Ensey, R. Bradshaw, James Behan, W. W. Taylor, C. L. Hall, Wm Ward, Thomas Golden, Margaret Downing, C. Hubbell, John Comerford, Hugh Kennedy, Wm Dakin, Henry Chester, Peter Burns, L. Dwyer, Charlotte F. Gordon, Robert Lane, C. D. Hoyt, J. H. McGovern, T. Pendergast, Robert Mellon, C. M. Beckler, Thomas Cusick, H. T. Lynch, Thomas Emery, S. S. Sprague, Wm Hampshire, A. Mills, J. R. Deardoff, Catherine Harvey, Jos. Sullivan, H. H. Nable, C. E. Lang, C. L. Wardwell, Wm Bluett, D. C. Dunn, Peter Dunn, H. C. Flower, O. E. Johnson, Jas. Forbes, Thomas Connell, Jas. Hamilton, Jas. G. Holmes, T. S. Bussell, Joseph Gerze, Thomas McDonough, Rosalie Strant, D. Cavanagh, Thomas H. Porter, John C. Piercy, Louiz Zeh, H. Mohan, Wm Freeborn, L. Roche, E. Roche, Wm McGarren, T. Norton, Edward Barry, H. D. Lathrop, Margaret Coney, W. R. York, M. Douglass, B. McLaughlin, A. Schenck, S. A. Vance, Andrew McManus, C. H. Cordes, Pat. Dempsey, A. Herbert, Wm McCormick, Maria Byron, Jane Clinton, J. W. Farren, Wm Sparks, Peter Barker, Thomas Phillips, Jno. Brodie, Hugh Dolan, John Turnbull, W. H. Pierson, W. Sutton, J. Harkin, J. Malone, W. Barry, J. J. Dixon, T. Morton, Geo. S. Crim, A. Bryan, Cathe Kenny, John Shed, M. Burns, Wm McMahon, Daniel Shea, Margaret Harloch, Theresa Dirks, John Cannon, J. Orr,
4 James Kelly, F. McCluney, M. Kiernan, James McDonough, A. J. Rutherford, John Cunningham, D. H. Kearney, F. Odermatt, James Lang, W. A. Cory, Charlotte Watts, T. J. Kimball, Pat. R. Hanna, Richard Haynes, Robert T. Browne, Mary Sweeny, James Sullivan, Alexander Heney, David M. Kelton, David Thesseran, F. Sullivan, P. O'Brien, T. G. McEvoy, Pat. Haynes, John McBride, Pierre Beick, Wm Shackleton, Neill Barr, Jos. Pepin, Margery Bradley, James Dougherty, M. McLaughlin, Thomas Peterson, John Downey, P. McDermott, A. Amandson, Daniel Sullivan, Denis Sullivan, George Schuerg, Daniel Keefe, John R. Conway, D. McMullan, John D. Dement, Thomas Emery, J. H. Pickens, R. T. Delano, Francis R. Kelly, C. H. Chamberlain, T. W. Walker, Catherine Carley, H. Anderson, W. Wortort, Jos. Lelong, Jno. Twohig, C. F. Busser, Bart Crowley, R. C. Markel, P. R. O'Brien, A. Kurtz, John Meagher, Thomas G. Maguire, W. C. Ralston, John Phillips, John F. Sullivan, Dennis Gorman, Morris Sheahan, Clark Churchill, T. Shenkil, B. E. Arnold, Robert White, Eugene Casserly, Margaret Coleman, H. P. Gallagher, J. S. Allemany, Geo. Kail, Ellen Mulhearn, Margaret Finlan, W. H. Sansome, John Gross, Robert Hill, Jas. Kelly, James O. Shea, T. Noonan, Charles Krause, J. Palmer, Geo. Hermann, John C. Meyer, H. H. Shortmerier, L. F. Hoadley, Wm Cruce, J. G. Perkins, John Tenney, C. Sullivan, M. Connel, Geo. S. Davis, Tim. Downey, John Brown, Jas. Sullivan, Dennis Brady,

Geo. E. Darling, H. A. Cobb, M. McGaughan, Margaret McKeon, Bridget Bushman, A. Schuminsker, W'm Burling, Hannah McAnnaly, W. Laplain, M. Collins, H. A. Benjamin, Peter Johnson,
5 Robert Keefe, Pat. Anglier, Mary A. Murray, Mary Piratski, Geo. Moore, Mary McSweeny, Daniel Burns, Eliz'h Murray, J. F. Hannagan, Ann Winn, Lawrence Tilly, W. H. Pritchard, Mary E. Nelson, F. N. Bellisle, Hugh Dolan, Pat'k Kelley, John Fennessy, Thomas Mooney, Alice Cahill, Tim Driscoll, Ellen Sullivan, Luke Hackett, Alice Moss, Charles McPhillany, D. Fennessy, Joseph Quigley, Mary Ash, Laurence Higgins, Ja's Murphy, Frederick Buel, Frank McConnally, L. Allschul, John Hahn, E. D. Carter, W'm L. Murphy, Adolph C. Weber, John Schant, Jacob Price, John L. Durkee, R. H. Monck, M. Kerr, Michael Powers, M. Roux, S. A. Weriall, T. W. Crawford, C. S. Capp, John H. Tumey, James T. Boyd, Lucius A. Booth, John Taylor, John Kehoe, W'm Cushman, W. H. Davis, Eben W. Park, F. Kilpatrick, Jno. Kane, Tho's Smith, John M. Todd, Stanhope Dickinson, Job Bigwood, John Agnew, Ellen Regan, Hannah Robson, Thomas Kelly, Peter G. Peltret, W'm Corbett, John Treat, Kate Hanu, M. O'Connor, Thomas Finnegan, Charles Kellett, Mary Crowell, Charles P. Gibbons, Mary Ann Murphy, John B. Brophy, J. B. Miller, Mary Ann Winall, A. M. Davis, Eva McGray, Elisha Presby, John McGeary, T. J. Winship, Andrew Russell, David Russell, A. Esnalt, Mary Phillips, Geo. S. Kittredge, Thomas Byrne, Mary J. Gerverding, Joseph Boardman, City and County of San Francisco, Board of Education City and County of San Francisco, J. Levy, Omnibus Railroad Company, Murray, Noble, Rose W. Crow, Edward Llewelling, Edward Sweeny,
6 John B. Goldstone, C. McManus, Daniel McCarthy, E. B. Kingsley, Geo. H. Parker, E. R. Harris, J. B. Murphy, Thomas Cummings, Constantine Muller, Geo. W. Morse, Cha's Smith, Henry Fiege, James Clinton, Jos. P. Hoge, S. M. Wilson, Ja's Peterson, James H. Reynolds, W. McKinney, W. Wolf, J. N. Finch, J. Morris, E. Kennedy, John Collin, Helena Dieterle, E. A. Keese, G. Blau, Sam McCullough, John O. Earl, W. Irwin, I. B. Fry, E. Pestner, W. Welsh, Winslow, Williams, N. S. Arnold, T. G. Kittredge, John Hannigan, W'm Dick, Anna E. Smith, E. Sutherland, Jacob Rauch, Mrs. L. A. Mowry, W'm Saura, Augustus Roberts, Henry Arrison, Bridget Mulharen, E. W. Park, John McTully, estate of Robert Beatty, P. J. Postel, Edward A. Hagan, R. B. Cheeseman, N. E. Carr, Joseph Tuttle, John Regan, John D. Wilson, Josiah Moulton, John M. Shotwell, C. M. Hitchcock, H. Leonard, Henry Doscher, C. F. Swett, R. Finley, C. W. Weingard, Thomas Wyatt, Daniel Hicks, R. H. Schunboff, Henry Mess, Donald Grant, B. Joost, Scheper, T. D. Sullivan, S. W. Dick, Hoyt, Sears, O. F. Griffin, W. H. Graves, E. R. Harris, P. Verplanck, Ellen Crocker, A. W. Stone, W'm Walsh, Avrie Van Wie, Geo. Treat, Henry Hames, B. Langan, Sam'l Weilheimer, C. Schwartzwalter, Washington Bartlett, Henry C. Somers, Harvey T. Kellom, H. S. Wheeler, S. D. Denny, Antoine Borel, Alfred Borel, Lafayette Carpenter, L. H. Borstell, A. Kohler, Thomas McKinstrey, Henry Christie, Ann B. Whitton, L. Englander, T. J. Reddish, Edward Denny, S. W. Dick, Pat'k Cleary, Francis D. Cleary, Helen M. Benton, J. H. Pohlker, Harvey Hall, A. B.
7 Richardson, Cordelia Raimond, Geo. Davidson, Marg't R. De Lange, J. C. Parkinson, Thomas Noonan, H. K. Curtis, I. E. Steckler, D. A. Lancaster, E. I. Blanding, Charlotte E. Mozer, Patrick Doyle, Sumner T. Record, Francis Haraszthy, Henry S. Brooks, W. E. Domett, Jas. Mc-Devitt, F. Mozer, L. A. Booth, Sarah J. Barber, Henry A. Crane, P. Schwerdt, G. M. Bockius, Hiram C. Buster, E. C. Quenel,

James McKew, E. Bauer, John P. Hawkins, F. Joost, H. H. Ellis, Tullis Argenti, James Devoe, j'r, S. Pinkton, Annie M. Winter, T. S. Morgan, C. S. Holmes, Howard Chapman, A. Rutherford, Lewis Soher, San Francisco and San José Railroad Company, E. H. Doyle, Robert White, John Schrœder, A. B. Winegar, Thomas H. Zeigenfuss, Eleanor Deliese, C. Moneypenny, S. B. Watson, John G. Klumpke, I. C. Collins, G. Hudson, Horton, Mulford, J. Morton, Mary White, N. E. Hawley, R. P. Clement, N. Wynne, Mary Park, John M. Peck, J. B. Brown, H. H. Bodwell, J. E. Knowles, E. L. Mayberry, W. Murray, T. W. Fuller, Samuel Brunt, F. P. McMahon, May T. Klopenstine, John D. Wilson, Josiah Moulton, M. D. Heckman, Peter Carter, P. J. Kennedy, P. C. Fogarty, G. W. Bell, estate of Peter Johnson, L. W. Sawyer, A. E. Tate, W. K. Vanderslice, E. A. Wilson, Francis Blake, James Moffatt, R. Doyle, Charles A. Barnes, W'm Matheson, E. L. Montgomery, Mary Boyle, R. E. Davis, Charles Lauterwasser, Jeanette Harley, Asa Harker, Michael Fay, Catherine Parkinson, A. C. Bonnell, Peter Bunty, Emma C. Davis, Pat. Collins, S. G. Worden, Tho's H. Douglass, John Taylor, J. J. Bauer, Lydia Morton, Daniel Graham, Samuel Foster, J.
8 Hamilton, J. A. Snook, Edw'd Worth, John Kearn, Johanna Wyman, Lawrence Dunn, Ja's Moore, Isaac H. Small, D. J. McCarthy, David B. Brown, H. W. Hathorne, J. Curley, Julia Cahalan, John Hart, John Hahn, J. F. Johnson, City and County of San Francisco, Board of Commissioners of Fire Department, R. White, P. Riley, Andrew Miley, (or Andrew Wiley,) James O. Donnell, Joseph Hughes, H. A. Crane, Cyrus D. Hoyt, Owen McCloskey, H. L. Davis, H. Maras, Mrs. C. U. Mann, James Boland, and John Doe, Abraham Doe, Adam Doe, Allen Doe, Albert Doe, Alfred Doe, Andrew Doe, Benjamin Doe, Bartholomew Doe, Charles Doe, Christopher Doe, Columbus Doe, David Doe, Daniel Doe, Edward Doe, Egbert Doe, Edwin Doe, Ethelbert Doe, Frank Doe, Fred'k Doe, Francis Doe, Ferdinand Doe, Felix Doe, Gabriel Doe, Gilbert Doe, Gardner Doe, George Doe, Harry Doe, Horace Doe, Hubert Doe, Isaac Doe, Isaiah Doe, Israel Doe, James Doe, John Doe, Joseph Doe, Jonathan Doe, Jeremiah Doe, Jesse Doe, Leonard Doe, Lucius Doe, Marvin Doe, Matthew Doe, Moses Doe, Manassah Doe, Michael Doe, Nathan Doe, Nathaniel Doe, Nicania Doe, Obidiah Doe, Orion Doe, Orpheus Doe, Oliver Doe, Patrick Doe, Patterson Doe, Richard Doe, Robert Doe, John Roe, Abraham Roe, Adam Roe, Allen Roe, Albert Roe, Alfred Roe, Andrew Roe, Benjamin Roe, Bartholomew Roe, Charles Roe, Christopher Roe, Columbus Roe, David Roe, Daniel Roe, Edward Roe, Egbert Roe, Edwin Roe, Ethelbert Roe, Frank Roe, Frederick Roe, Francis Roe, Ferdinand Roe, Felix Roe, Gabriel Roe, Gilbert Roe, Gardner Roe, George Roe, Harry Roe, Horace Roe, Herbert Roe, Isaac Roe, Isaiah Roe, Israel Roe, James Roe, Jonathan
9 Roe, John Roe, Joseph Roe, Jeremiah Roe, Jesse Roe, Leonard Roe, Lucius Roe, Marvin Roe, Matthew Roe, Moses Roe, Manasseh Roe, Michael Roe, Nathan Roe, Nathaniel Roe, Nicanor Roe, Obediah Roe, Orion Roe, Orpheus Roe, Oliver Roe, Patrick Roe, Patterson Roe, Peter Roe, Richard Roe, Robert Roe, the complainants designating by these last one hundred and sixteen fictitious names the other persons in the actual possession of portions of said premises, whose true names are unknown to them, and divers other persons to your orators unknown, but whose names, when discovered, they pray may be made parties defendant hereto, with proper and apt words to charge them with the premises, &c., citizens of the United States and residents of the State of California; and thereupon your orators complain and say:

1st. That, on the 16th day of September, A. D. 1859, David C. Brod-

erick, being at that time a citizen of the United States and a resident of the city and county of San Francisco, in the State and district of California, died intestate, seized and possessed of real and personal property situate in said State and district.

2nd. That your orators, Mary Keily, Ann Wilson, and Ellen Lynch, were at the death of the said Broderick his next of kin and only heirs at law; that they are daughters of Catharine Broderick, by her intermarriage with Ryan Byrne, of the county of Roscommon, Burnese, Ireland; the said Catharine Broderick was the only sister of Thomas Broderick, who was the father of said David C. Broderick; said Catherine Broderick was twice married and had nine children, all of
10 whom died unmarried and childless, save your orators, Ellen, Mary, and Ann; the said Ellen was the only child by the first marriage; was a married woman at the time of the death of the said David C. Broderick, but is now a widow; the original name of said Ellen's husband was John Brick, but about fifty years ago he went from Trilee, county of *Care*, Ireland, to the colony of New South Wales, where he assumed the name of John Lynch, the said Ellen being his wife at the time and going there with him, and took and has ever since borne the name of Lynch; the said Mary and Ann were, and are, the only surviving children of said Catherine Broderick by her second marriage, after the death of said Ryan Byrne, and were, at the time of the death of said David C. Broderick, and still are, married woman, the said Mary being the wife of your orator, John Kiely, and the said Ann being the wife of your orator, George Wilson; there were no other relations or heirs of the said David C. Broderick living at the time of his death, to the knowledge, information, or belief of your orators, save your orators Ellen, Ann, and Mary.

3d. That, at the time of his death, the said David C. Broderick was seized in his demesne, as of fee, of the real estate particularly mentioned and described in the schedule hereto annexed, marked "Schedule B," and was the owner and possessed of the personal property mentioned and described in the schedule hereto annexed, marked
11 "Schedule C," which schedules your orators pray may be taken as a part of this their bill of complaint.

4th. That, on or about the 20th day of February, A. D. 1860, the said defendant, John A. McGlynn, on behalf of himself and one Andrew J. Butler, presented to the probate court of the city and county of San Francisco a certain paper writing, a copy of which is hereto annexed, marked "Schedule A," which your orators pray may be taken as a part of this their bill of complaint, which they falsely pretended was the last will and testament of the said David C. Broderick, in which the said John A. McGlynn, Andrew J. Butler, and one George Wilkes were named executors, and they, at the same time, presented their petition in writing, whereby they prayed the said court to admit the said will to probate, and issue them letters testamentary, which petition and letters remain on file in said probate court, and your orators charge that they well knew, at the time, or were informed, that the said paper was a forgery, and was not the will or testament of the said David C. Broderick.

5th. And your orators are informed and believe, and therefore charge, that the said paper writing, so presented as the last will and testament of the said David C. Broderick, was a false and forged paper, and was not the will or testament of the said David C. Broderick, nor signed, nor published, nor declared by him as such; that the same was forged and fabricated some time about the 1st day of January, 1860, and after

the death of the said David C. Broderick, with the intent
12 and for the purpose of defrauding the legal heirs of the said David C. Broderick; that said will was written by one Alfred A. Phillips, and the name of David C. Broderick signed thereto by one Moses E. Flanagan.

That the said Butler, well knowing that the said paper was a forgery, caused it to be presented, as aforesaid, as the genuine, true, and valid will of the said David C. Broderick, and caused a commission to issue under the seal of the said probate court, to a commissioner of the State of California residing in New York City, to take the testimony, reduce to writing, and return it to the said probate court, of John J. Hoff and Alfred A. Phillips, whose names appear as subscribing witnesses to said paper; and their testimony was so taken and returned, to the effect and purport that the name of the said David C. Broderick signed to said instrument was the genuine signature of the said David C. Broderick, and that he did sign, seal, publish, and declare the said instrument to be his last will and testament, in the presence of the said witnesses; and that they did sign the same, as witnesses, at his request, in his presence and in the presence of each other; and the said Butler did, also, procure and present to said court the testimony of certain experts in handwriting, who testified to said court that, in their opinion, the name of David C. Broderick, subscribed to the said paper, was in the genuine handwriting of the said David C. Broderick; he, the said
13 Butler, well knowing that the same was not the genuine handwriting of said David C. Broderick, and the same was not in truth and fact the genuine handwriting of said Broderick; and by means of such false testimony (your orators not having any notice in fact of said proceedings, and no one appearing in their behalf) they did obtain the order and judgment of the said court admitting the said will to probate, as the genuine last will and testament of the said David C. Broderick, and granting letters testamentary to Andrew J. Butler (now deceased) and John A. McGlynn, as executors of said last will and testament, and they proceeded to act as such executors, allowed and procured to be approved by the probate judge claims against the said estate to the amount of $80,000.00.

And afterward the said Butler and McGlynn caused application to be made to said probate court for, and obtained, an order of sale of the estate of the said Broderick, deceased, under which they sold the whole of the s'd estate. That at the time of said sale, which took place in the city and county of San Francisco, it was a matter of public and general notoriety that the said pretended last will and testament of said David C. Broderick, under and by virtue whereof all said probate proceedings were taken and said property sold, was not the will of said Broderick, but was a forged and simulated paper, and all of those who purchased at the said sale, and the defendants and those through
14 whom they deraign title subsequent to the said sale, purchased and acquired whatever interest they have or had with full notice of the frauds hereinbefore alleged.

Your orators further show that they did not, nor did either of them, have any knowledge, notice, or information of the death of said David C. Broderick, nor of the forgery of said pretended will, or of the presentation of the same to the probate court, or of the petition for the probate thereof, and the grant of letters testamentary, or of the petition for the order of sale, or of the granting of said order of sale, or of the sale or sales thereunder, or of any of the proceedings of said probate court in the matter of said estate of said David C. Broderick, until

within three years before the filing of this their bill, nor until the last day of December, A. D. 1866, when they first heard of the matter generally, and since that time they have been endeavoring diligently to discover the facts and truths of the matter, and the evidence to prove the same.

Your orators further show that the defendants herein named, against whom process of subpœna is prayed, claim some estate, claim to own and are in possession of some portion of the said lands, parcel of the estate of said David C. Broderick, deceased, deriving their only title or claim to such property by, through, or under the said probate sales and conveyances as made by said pretended executors by virtue thereof, and of said forged will. That said Butler is dead, and said Wilkes
15 no longer has or claims to have any interest in the said estate.

That the said acts and doings of the said defendants, and the said forgery committed and the frauds perpetrated by the defendants, hereinbefore charged and referred to, are contrary to equity, and tend to the injury of the complainants.

That they have no remedy at law without the assistance of a court of equity.

To the end, therefore, that the said John A. McGlynn and the rest of the defendants and the confederates in the fraud and forgery alleged, when discovered, may, upon their several and respective corporate oaths full, true, direct, and perfect answer make to all and singular the matters hereinbefore stated and charged, and to all and singular the premises aforesaid, as fully and particularly as if the same were hereinafter repeated and they thereunto distinctly interrogated, and that not only as to the best of their respective knowledge and remembrance, but also as to the best of their several and respective information, hearsay, and belief, and more especially that they answer and set forth and discover:

1st. Whether they do not know, have not heard, or are informed, and in their conscience believe that the said pretended last will and testament, or the paper writing so denominated and herein set forth and referred to, was and is a simulated or forged instrument.

2d. Whether the same was a false & forged paper, was not the will or testament of the said David C. Broderick, nor signed, nor declared, nor published as such by him.

3d. Whether the same was fabricated after the death of said
16 David C. Broderick, and with a fraudulent intent, or with the intent to defraud the legal heirs or claimants to the property of said deceased.

4th. Whether said pretended will was written by one Alfred A. Phillips, in New York, about the 1st of January, 1860.

5th. Whether the name D. C. Broderick was signed thereto by one Moses E. Flanagan.

6ih. Whether said Butler caused the same to be brought forward, presented, and admitted to probate as a genuine and valid will in the probate court of San Francisco, well knowing the same to be a forgery.

7th. Whether he procured the testimony of witnesses to swear to the validity the said Phillips, the said Hoff, and others.

8th. Whether he, by such testimony, procured the admission of said pretended will to probate, and the recognition of said McGlynn and himself as executors of said will, and, as such, did finally sell the whole of said estate by virtue of the orders of said probate court, obtained and predicated of said false and forged will.

And, further, your orators pray that the said John A. McGlynn, David D. Colton, and the other defendants, cognizant of and who took part in

the alleged probate sale of the said property of the said estate of the said D. C. Broderick, deceased, answering, be required to set forth
17 fully the details of the sale of the said real estate, the time when sold, and by what order or authority the date of such order, the amounts received at such sale or sales, to whom the proceeds were paid, by whom the same were finally and respectively received, and by what order or authority.

Also the entire amount in detail received in money, goods, contracts, promissory notes, choses in action, or in any and every other kind of personal property received by said McGlynn or other defendants or other person or persons, from the estate or effects of said deceased D. C. Broderick, and to whom the same was finally paid over or delivered, respectively, and by what order or authority the same was so done.

May it please your honors to grant a writ of subpœna, addressed to the said John A. McGlynn and the other defendants above named, requiring them and each of them to appear on a day certain, to be named therein, and full, true, and perfect answer make to all and singular the premises, and to stand to, perform, and abide such order, direction, and decree as to your honors shall seem meet, and the court shall determine.

That the said pretended will be declared a forgery; that the probate thereof and all subsequent proceedings be set aside, annulled, and declared of no effect.

That the said fraudulent decrees and orders of the 8th of October, 1860, admitting said forged paper to probate, and that of the 7th
18 of November, 1861, ordering the sale of the real estate to pay said debts and legacies, be set aside, annulled, and declared of no effect.

Or that it be ordered, adjudged, and decreed that said defendants, purchasers of said lands and lots under the said orders of sale by said probate court, and at the sale thereunder or deraigning title therefrom, stand charged as trustees of your orators, the said Ellen, Mary, and Ann, of all title or estate by the said defendants severally and respectively acquired by, through, or under the said sale of the said McGlynn, or his deeds or otherwise, or by virtue of the existence and probate of said pretended will, and that the said defendants may be compelled severally to convey all right and title so by each of them acquired in the said estate, or any part thereof, to your said orator', Ellen, Mary, and Ann. And further, that a commissioner, if necessary, may be appointed by this court to take an account of the sales of all the property made by virtue of or under said pretended will and the said order and orders of sale of said probate court.

And in default of the execution and delivery of such conveyances as the court shall decree, that the said commissioner, or a commissioner appointed by this court for that purpose, shall make, execute, and deliver such deeds and conveyances for the said property to and for
19 your said orators last aforesaid, at the clerk's office of this honorable court.

And that your orators may have such other or further relief as to equity and good conscience shall seem meet.

And your orators will ever pray, &c.

W'M W. CHIPMAN,
Solicitor for Complainants,
17 *Exchange Buildings.*

M. G. COBB,
J. MCM. SHAFTER,
Of Counsel.

20 SCHEDULE "B."

The following pieces of property situated in the city and county of San Francisco, and described as follows, and known on the official plan and map thereof as—

Hundred vara lot, number 80
Hundred vara lot, " 243
Hundred vara lot, " 263
Fifty vara lot, " 1090
Fifty vara lot, " 1134
Fifty vara lot, " 1218
Fifty vara lot, " 1222
Fifty vara lot, " 1260
Fifty vara lot, " 1314
Fifty vara lot, " 1374
Fifty vara lot, " 1391
Fifty vara lot, " 1392
Beach and water lot, " 29
Beach and water lot, " 30
Beach and water lot, " 505
Beach and water lot, " 506
Beach and water lot, " 512
Beach and water lot, " 621
Beach and water lot, " 631
Beach and water lot, " 632
Beach and water lot, " 688
Beach and water lot, " 701
Beach and water lot, " 737
Beach and water lot " 718
21 Beach and water lot " 770
Beach and water lot " 771
Beach and water lot, " 772
Beach and water lot, " 721
Beach and water lot, " 724
Beach and water lot, " 726

Southeasterly half of south beach block number one, situated on the northerly side of Harrison street, between Spear and Stewart streets, and being 275 feet in front by 275 feet in depth.

Also lot adjoining the last above-described lot northerly, running 137½ feet on Spear street, thence easterly 137½ feet at right angles, thence at right angles 137½ feet to Folsom street, thence northeasterly along Folsom street 37½ feet, thence at right angles southeasterly 200 feet, thence at right angles to Stewart street 100 feet, thence southeasterly along Stewart street 75 feet, thence at right angles 275 feet to the place of beginning.

Also, south beach block, number five, bounded by Fremont, Bryant, Beale, and Brannan streets; also fractional block No. 12, bounded by Front, Pine, and Market streets.

Also lagoon, 100 vara lot, number 15
lagoon, 100 vara lot, number 25
lagoon, 100 vara lot, number 26

Also, lot of land commencing at a point on the old road from
22 the Mission Dolores to the Pueblo de San José, at the southwesterly corner of land formerly occupied by one A. A. Green, and

about 150 yards in a southerly direction from where said Green's house (formerly known as the "Pavilion") stood, running thence south along said road 600 yards to a small creek; thence along said creek, and in an easterly direction about 1,600 yards to a bluff in an arm of the Bay of San Francisco; thence north in a direct line across said arm to the eastern wall of lands of said mission, known as the "Potrero wall;" thence along said wall north about 700 yards to a northern line fence established between said premises and lands of R. G. Perkins; and thence west along said line of fence in a direct line about 1,300 yards to point of beginning, being the tract of land commonly known as the "Pioneer Race-course tract."

Also, lot of land commencing at a point where the south line of lands formerly owned by one Abram Bartol intersects the old San José road or "Camino Real," and running thence east along south side of said lands formerly owned by said Bartol, 1,368 feet, to lands of one R. G. Perkins; thence south along the west line of said Perkins' land 1,020 feet to lands of G. and P. Treat; thence west along north line of said Treat's land 1,753 feet to said San José road; thence north along said San José road 1,146 feet to place of beginning, formerly commonly known as the Red House tract.

23 Also, the lot or tract of land beginning at a stake in the ravine at the head of the northern branch of the Laguna de la Merced, distant about ten chains south from the "Ocean House," and one chain east from the lake; thence north and passing to the west of Alfred A. Green's barn 80 chains to a stake which stands in the said bank (existing in 1861) about 60 chains north from A. A. Green's house, (as the same stood in 1861;) thence at right angles west 80 chains, more or less, to ordinary high-water mark on the ocean; thence south along line of the beach to the intersection of a straight line drawn from the point of commencement, through the centre of said northern branch of the Laguna de Merced; thence east along such line to place of beginning.

SCHEDULE "C."—*Personal property.*

One box deposited with John Sime and Co., 1861, containing gold watch (shattered) and various gold specimens and valuable trinkets.
1 gold specimen pin.
2 fob-chains.
1 scarf-pin.
1 watch-key.
1 watch.
1 string of beads.
1 bag of gold specimens, 33 oz. 12 dwts.
Monies belonging to the deceased Broderick.
Total value, to wit, $20,500.

24 SCHEDULE "A."

In the name of God, amen, I, David C. Broderick, of the city of San Francisco, in the State of California, of sound mind and menory, do make and publish this as my last will and testament:

First. After all my just debts and liabilities are paid, I give and bequeath to my friend John A. McGlynn, of San Francisco, the sum of ten thousand dollars.

Second. All the rest and residue of my estate, both real and personal, I give and bequeath to my friend George Wilkes, of the city of New York.

Third. I hereby make, constitute, and appoint my friends George Wilkes, John A. McGlynn, and Andrew J. Butler executors of this my last will and testament, and also declare that no sureties shall be required of them or either of them.

Last. I hereby revoke all wills and condicils by me heretofore made, and declare this to be my only last will and testament.

In witness whereof I have hereunto set my hand and seal at the city of New York this second day of January, one thousand eight hundred and fifty-nine.

D. C. BRODERICK. [SEAL.]

The above instrument of one sheet was at the date above written at the city of New York, declared to us by David C. Broderick, to us personally known, to be his last will and testament, and he then and
25 there acknowledged to each of us that he had signed the same, and we, at his request, and in the presence of each other, sign our names as the subscribing witnesses, the word "my" on line ten on the first page being interlined before execution.

A. A. PHILLIPS,
No. 416 *Broom' street, New York.*
JOHN J. HOFF,
131 *and* 133 *Washington street, Hoboken, N. J.*

(Endorsed:) Filed December 16, 1869. Geo. E. Whitney, clerk, by J. D. Grimwood, D. C.

26 *Disclaimer of Jno. M. Todd.*

Circuit court of the United States, ninth circuit, district of California.

JOHN KIELEY AND MARY KIELEY, HIS WIFE, and others, plaintiffs,
vs.
JOHN A. McGLYNN, JOHN M. TODD, AND OTHERS, defendants.

Now comes John M. Todd, one of the defendants above named, and renounces all claims to the subject of the demand made by plaintiffs' bill.

Wherefore he prays said bill may be dismissed as to him, and that he be allowed his costs herein expended.

JOHN M. TODD,
Attorney in Person.

(Endorsed:) Filed 7th March 1870. George E. Whitney, clerk.

27 *Def't Francis Read's answer.*

Circuit court of the United States, district of California. In equity.

JOHN KIELEY ET AL., PLAINTIFFS,
vs.
JOHN A. McGLYNN ET AL., DEFENDANTS.
Answer of Francis Read.

Now comes Francis Read, served with subpœna and sought to be made a defendant in the above-entitled cause, and for answer to plaint-

iffs' complaint filed herein, says that he has not sufficient information or belief of and concerning the matters and things therein stated and set forth, to answer the same, or any part thereof, understandingly, nor in his conscience, from what he knows, nor from what he has heard, does he believe the injuries, frauds, simulations, forgeries, perjuries, and other wrongs complained of by plaintiffs in their bill of complaint are true, or any part or portion of them.

Therefore, defendant, in his own behalf, comes and defends the wrongs and injuries, when, &c., and for answer to plaintiffs' bill of complaint, denies each and every allegation therein contained generally and specifically.

And for a further answer, defendant begs leave to show to this honorable court that he is the owner, in fee-simple, by entry and patent
28 under the Government of the United States of America, of the following-described parcels of land in the city and county of San Francisco, California, to wit: Lot No. one (1) in section (27;) lot No. three (3) and the fractional S. W. $\frac{1}{6}$ of the N. W. $\frac{1}{4}$ of section twenty-six, (26,) township (2) south, range six (6) west, Mount Diablo meridian, as appears by the official plat of said township and range now on file in the U. S. land-office, at San Francisco, California; that he is now and ever has been the lawful owner, and entitled to the possession of said premises.

And for further answer, defendant denies that J. C. Broderick, his heirs, executors, administrators, or assigns, ever was seized in his or their demesne, or of fee or otherwise, of the premises above described.

Wherefore, the premises having been answered to the best information, knowledge, and belief of defendant, he prays hence to be discharged, with his costs in this behalf expended.

FRANCIS READ.

ISAAC BAGGS,
Attorney for Defendant.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Francis Read, being duly sworn, deposes and says that he is the person named as defendant in the foregoing answer; that he has heard the same carefully read, and knows the contents thereof to be true of his own knowledge.

FRANCIS READ.

29 Sworn to and subscribed to before me this 7th day of March, A. D. 1870.

GEO. E. WHITNEY,
Com'r U. S. Cir. C't, Dist. of California.

(Endorsed:) Filed 7th March, 1870. George E. Whitney, clerk.

30 *Dismissal as to Anna Mordecai.*

In U. S. circuit court, district of California.

JOHN KIELEY ET AL.
vs.
JOHN A. MCGLYNN ET AL. } In equity.

The above-entitled action is hereby dismissed as to Anna Mordecai, as to lot 25 feet front on First street, by 80 feet deep running south-

westerly, from First street along upon what is know as Cutter or Licks' alley, being a subdivision of lot number one (1) of the 100 vara lot survey of the city and county of San Francisco, according to the resurvey of W'm M. Eddy, C. E., surveyor of the town of San Francisco, &c.; and dismissed also as to John Twohig, so far only as he is connected with said property above described.

W'M W. CHIPMAN,
Sol'r for Complainants.

MARCH 8TH, 1870.

(Endorsed:) Filed 8th March, 1870. Geo. E. Whitney, clerk.

31 At a stated term of the circuit court of the United States of America for the district of California, held at the court-room in the city of San Francisco, on Thursday, the tenth day of March, in the year of our Lord one thousand eight hundred and seventy:

Present, the honorable Lorenzo Sawyer, judge.

Order quashing service of subpœna.

JOHN KIELEY ET AL.
vs.
JOHN A. MCGLYNN ET AL.

This cause coming on for a hearing upon an order to show cause why service of subpœnas on defendants, represented by Wilson and Crittenden, esquires, should not be set aside, E. P. Crittenden, esq., appearing specially for said defendants, and W. W. Chipman, esq., for complainant, after hearing counsel, ordered, that service be quashed as to all defendants who have not already appeared herein, who have not been served with process by the United States marshall.

I hereby certify that the foregoing is a full and true copy of an original order made and entered in the above-entitled action.

Attest my hand and seal of said circuit court this 19th day of September, A. D. 1871.

L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE, *Dep. Clerk.*

32 *Demurrer of J. J. Reichenback.*

UNITED STATES OF AMERICA:

Circuit court of the United States, district of California.

JOHN KIELEY AND MARY KIELEY, HIS WIFE, in her right, George Wilson, and Ann Wilson, his wife, in her right, and Ellen Lynch, complainants,
vs.
JOHN A. MCGLYNN, AND OTHERS, DEFENDANTS.
No. 849. In equity.

The demurrer of J. J. Reichenback, one of the defendants, to the bill of complaint of the above-named complainants.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true in such manner and form as the same are therein and

thereby set forth and alleged, doth demur in law to the said bill, and for cause of demurrer showeth that the said complainants have not by their said bill made such a case as entitled them to any discovery or relief from or against this defendant touching the matters contained in the said bill, or any of such matters.

Wherefore, and for divers other good causes of demurrer ap-
33 pearing in the said bill of complaint, this defendant doth demur to the said bill, and to all the matters and things therein contained, and prays the judgment of this honorable court whether he shall be compelled to make any further answer to the said bill, and he humbly prays to be hence dismissed with his reasonable costs in this behalf sustained.

W. W. COPE,
Solicitor for Defendant J. J. Reichenback.

I hereby certify that, in my opinion, the foregoing demurrer is well founded in point of law.

W. W. COPE,
Solicitor for Defendant J. J. Reichenback.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

J. J. Reichenbach, being first duly sworn, deposes and says that he is the defendant named in the foregoing demurrer, and that the same is not interposed for delay.

J. J. REICHENBACH.

Subscribed and sworn to before me this second day of May, A. D. 1870.

L. S. B. SAWYER,
Com'r U. S. Circuit Court, Dis't of Cal.

Filed 2d April, 1870. Geo. E. Whitney, clerk, by L. S. B. Sawyer, d. c.

34 *Replication to answer of Francis Read.*

In circuit court of the United States for the northern district of California, ninth circuit.

JOHN KIELEY, ET AL., COMPLAINANTS,
vs.
JOHN A. MCGLYNN, ET AL., DEFENDANTS. } In equity.

The replication of John Kieley and the other complainants herein to the answer of Francis Read, a defendant.

These repliants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of the answer aforesaid, for replication thereto, say that they will aver and prove their said bill to be true, certain, and sufficient in law to be answered unto, and that the said answer of said defendant Francis Read is uncertain, untrue, and insufficient to be replied to by these repliants; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in law to be replied unto, confessed or avoided, traversed or denied, is true.

All which matters and things these repliants are and will be ready

to aver and prove as this honorable court shall direct, and humbly
35 pray, as in their said bill they have already prayed.

W'M W. CHIPMAN,
Sol'r for Complainants.

(Endorsed :) Filed 4th April, 1870. Geo. E. Whitney, clerk.

36. *Stip. of discontinuance as to Cha's Minturn.*

In the circuit court of the United States, ninth circuit, district of California.

JOHN KIELEY, ET AL., COMPLAINANTS.
vs.
JOHN A. MCGLYNN, ET AL., DEFENDANTS.

The above-entitled action is hereby discontinued as to Charles Minturn, (sued herein as John Doe,) and as against the following premises, viz :

All that certain lot, piece, or parcel of land situate, lying, and being in the city and county of San Francisco, State of California, bounded and described as follows, to wit :

Commencing at a point formed by the intersection of the southerly line of Pine street with the easterly line of Front street, and running thence along the said easterly line of Front street southerly forty-nine feet and fifty-one one hundre'ths of a foot, ($49\frac{51}{100}$;) thence at right angles easterly and parallel with Pine street, forty-seven feet and six inches; thence southeasterly sixty-seven feet and six inches more or less, to a point on the northwesterly line of Market street, distant one hundred feet northeasterly from the northeasterly corner of Market and Front streets; thence northeasterly along the said northwesterly line of Market street one hundred and seventy-eight feet and twenty-
37 three one hundre'ths of *of* a foot, to a point formed by the intersection of Market and Pine streets; thence along southerly line of Pine st. two hundred and twenty-five feet and seventy-six one hundre'ths of a foot ($225\frac{76}{100}$) to the point of beginning.

W'M W. CHIPMAN,
Sol'r for Complainants, 17 Exchange Buildings, San Francisco.

(Endorsed :) Filed 8th April, 1870. Geo. E. Whitney, clerk, by L. S. B. Sawyer, d. c.

38 At a stated term of the circuit court *of the circuit court* of the United States of America, for the district of California, held at the court-room in the city of San Francisco, on Friday, the 8th day of April, in the year of our Lord one thousand eight hundred and seventy. Present, the honorable Lorenzo Sawyer, judge.

Order disconti'g cause as to C. Minturn.

JOHN KIELEY ET AL.
vs.
JOHN A. MCGLYNN ET AL.

On motion of Sol. A. Sharp, esquire, and on filing stipulation to that effect, ordered, that this action be discontinued as to defendant Charles

Minturn, sued herein as John Doe, and as against the premises in said stipulation mentioned.

I hereby certify that the foregoing is a full and true copy of an original order made and entered in the above-entitled action.

39 Attest my hand and seal of said circuit court this 19th day of September, A. D. 1871.

[SEAL.] L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE, *Dep. Clerk*.

(Endorsed:)

40 *Plea of P. G. Partridge in abatement.*

Circuit court of the United States of the district of California.

JOHN KIELEY ET AL.
vs.
JOHN A. MCGLYNN ET AL.

Peter G. Partridge, one of the above-named defendants, by protestation, not confessing or acknowledging any of the matters or things set forth in the plaintiff's bill to be true, says that he is an alien, a subject of the Queen of Great Britain, and is not a citizen of the United States of America, or of the State of California.

Wherefore he prays judgment of the court if he ought to be compelled to answer said bill.

SIDNEY V. SMITH AND SON,
Attorneys for Defendant named.

DISTRICT OF CALIFORNIA, *&c.*

Peter G. Patridge, the above-named defendant, being duly sworn, says that the foregoing plea is not interposed for delay, and that it is true in point of fact.

P. G. PATRIDGE.

41 Sworn before me this 19th day of April, 1870.

L. S. B. SAWYER,
Commissioner of the U. S. Cir. Court, District of California.

I do hereby certify that in my opinion the foregoing plea is well founded in point of law.

SIDNEY V. SMITH.

(Endorsed:) Filed 20 April, 1870. Geo. E. Whitney, clerk, by L. S. B. Sawyer, d. c.

42 *Discontinuance as to W. H. Taylor.*

In the circuit court of the United States for the district of California, ninth circuit.

JOHN KIELEY ET AL., COMPLAINANTS,
vs.
JOHN A. MCGLYNN ET AL., DEFENDANTS. } In equity.

This cause is discontinued as against defendant W'm H. Taylor, and the following parcel of ground only, and, the court consenting, an order

may be entered herein accordingly, to wit, that certain parcel of 100 vara lot, number 80 in the official plan and map of the city and county of San Francisco, described as follows: commencing at a point on the southeast line of Harrison street, distant N. E. 325 feet from the easterly corner of Harrison and 4th streets, thence running N. E. along said line of Harrison street 25 feet, thence at right angles S. E., parallel with 4th street 85 feet, thence at right angles S. W., parallel with Harrison street 25 feet, thence at right angles N. W. 85 feet to the place of beginning.

W'M W. CHIPMAN,
Solicitor for Complainants, 17 Exchange Buildings.

(Endorsed:) Filed this 3d June, 1870. Geo. E. Whitney, clerk, by L. S. B. Sawyer, d. c.

43 At a stated term of the circuit court of the United States of America for the district of California, held at the court-room in the city of San Francisco, on Saturday, the 18th day of June, in the year of our Lord one thousand eight hundred and seventy:

Present, the honorable Lorenzo Sawyer, judge.

Order allowing alias subpœna to issue herein.

JOHN KIELEY ET AL.
vs.
JOHN A. MCGLYNN ET AL.

On motion of W. W. Chipman, esq., it is ordered that an alias subpœna issue herein.

I certify that the foregoing is a full and true copy of an original order made and entered in the above-entitled action.

Attest my hand and seal of said circuit court this 19 day of September, A. D. 1870.

[SEAL.] L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE, *Dep. Clerk.*

44 *Alias subpœna.*

U. S. circuit court, district of California. In equity.

JOHN KIELEY ET AL.
vs.
JOHN A. MCGLYNN ET AL.

I, William Gouverneur Morris, United States marshal for the district of California, hereby certify that I made personal service of the subpœna hereto annexed, bearing date June 18, 1870, upon the following-named defendants, by delivering to and leaving with each of them in person a full, true, and correct copy thereof, in the city and county of San Francisco, California, at the respective dates set opposite their respective names, to wit: Upon—

Adams, W'm J., Pres't Union Lumber Ass	July 26, '70
Ames, B. F	" "
Altschul, L	30, "

	Brown, Robert T	22, "
	Buel, Frederick	26, "
	Bauer, E	July 26
	Blake, Francis	"
	Boyle, Mary	" 22
	Brown, David B	" 26
		1870.
	Boyd, Jas. T	July 25
	Booth, Lucius A	" 29
	Byrne, Thomas	" 26
	Burnet, J. M., president board of education	" 26
	Benton, Helen M	" 22
	Barber, Sarah S	" 21
	Dowzell, A. J	" 6
	Duffy, Ann	" 7
	Downey, Tim	" 26
45	Blumen, L., sued as David Roe	July 23
	Burns, Margaret, sued as Frederick Roe	" 23
	Barrow, Emily, sued as Charles Doe	" 8
	Barry, Edward	" 9
	Center, John	" 25
	Casey, Henry	" 7
	Cleaveland, J. M	" 23
	Colton, David D	" 7
	Crim, Samuel	" 7
	Crim, George S	" 6
	Curley, Catherine	" 29
	Cobb, H. A	" 9
	Collins, Michael	" 27
	Carvalho, Elizabeth, as David Roe	" 23
	Corbett, W'm	" 27
	Cleary, Pat	" 23
	Crane, H. H	" 27
	Cahalan, Julia	" 21
	Carre, Clara, sued as Isaac Doe	" 21
	Hauns, Henry	" 22
	Hawkins, John P	" 27
	Hudson, G	" 30
	Hogan, John, sued as Isaac Roe	" 25
		1870.
	Held, E. (Mrs.,) sued *sued* as Adam Doe	July 7
	Durkee, John L	July 27
	Douglass, Thomas H	" 26
	Earl, John O	" 26
	Felton, John B	" 26
	Flower, H. C	" 30
	Flannagan, John, sued as Jesse Roe	" 27
	Gardner, James J	" 25
	George, Julius	" 27
	Grover, W. A	" 7
	Golden, Thomas	" 30
	Goldstone, John B	" 9
	Haley, Charles M., sued as Charles S. Haley	" 6
	Hamilton, Joseph	" 30
	Herbert, A	" 30
	Harloch, Margaret	" 23

Hicks, Daniel ..... " 30
Morrison, Samuel E ..... " 30
Middleton, John ..... " 7
Manning, A. W ..... " 28
Mogan, A ..... " 7
Mogan, J ..... " 7
Moore, J. J ..... " 29
Markel, R. C ..... " 30
Mooney, Thomas ..... " 27
Murphy, James ..... " 25
Moneypenny, C ..... " 23
Moulton, Josiah ..... " 29
46 Johnson, Peter ..... " 23
Kiernan, M ..... " 30
Keefe, Daniel ..... " 28
Kelley, Joseph ..... " 30
Kellett, Charles ..... " 9
Kittredge, J. G ..... " 28
Klumpke, John G ..... " 6
Knowles, J. E ..... " 21
Klopenstine, Mary F ..... " 9
Kock, W'm, sued as David Doe ..... " 8
Lankershim, Isaac ..... " 6
Lelong, Joseph ..... " 29
Lincoln, Mary, sued as Ethelbert Doe .....
McGlynn, John A ..... " 26
Morton, Reuben ..... " 6
Moynehan, Mary, widow of A. Moynehan ..... " 8
O'Brien, Peter, sued as Albert Roe ..... " 23

1870.

Matheson, W'm ..... July 30
Morton, Lydia ..... " 21
Mann, (Mrs. C. W) ..... " 9
McGovern, P. H ..... " 22
McDonough, Thomas ..... " 30
McMahon, Mary ..... " 23
McDevitt, James ..... " 29
McClosky, Owen ..... " 21
Mulligan, Patrick, sued as Christopher Roe ..... " 23
Minturn, Charles, sued as Michael Roe ..... " 29
Orr, James ..... " 23
Omnibus Railroad Company, on J. O. Eldridge, president. " 6
Rampe, Henry, sued as Robert Doe ..... " 22
Rock, Nelson, sued as Horace Roe ..... " 23
San Francisco City and Company, on Thomas H. Selby " 27
47 Purcell, Ann ..... July 7
Peltret, Peter G ..... " 29
Pohlker, J. H ..... " 22
Parkinson, Catherine ..... " 21
Parker, Rufus, sued as Nathan Doe ..... " 22
Pyne, Robert, sued as Orion Doe ..... " 22
Perrin, Adeline, sued as Francisco Roe ..... " 22
Parrish N. C., sued as Francisco Doe ..... " 9
Quirk, Mary, sued as Lucius Doe ..... " 22
Rule, J. W ..... " 29
Russer, C. F ..... " 22

Ralston, W. C	"	9
Robson, Hannah	"	23
Tarpey, M	"	6
Twohig, John	"	22
Tully, John M	"	9
Tiernan, R., sued as G. W. Moore	"	9
Vanderslice, W. R	"	27
Wool, John	"	6
Sutton, W	July	6
Straub, Rosalie	"	29
Shea, John	"	23
Sullivan, Ellen	"	30
Sansome, W. H	"	23
Shotwell, John M	"	25
Stone, A. W	"	30
Sears, W'm H	"	29
San Francisco, San José R. R., on H. *on H.* Newhall, president	"	30
Swain, R. R., sued as Edwin Roe	"	23
Simons, Nathan, sued as Gabriel Roe	"	23
Steiger, Antoinette, sued as Allen Doe	"	7
Sullivan, Ellen, sued as Albert Doe	"	7
Scarry, John, sued as Bartholomew Doe	"	8
Wynn, Patrick, sued as Horace Doe	"	21
Windrow, Joseph, sued as John Doe	"	21
Wanz, John D., sued as Edward Doe	"	23
Wulzer, Annie, sued as Pat. Collins	"	7

1870.

48	Wiley, Isaac	July	29
	White, Robert	"	27
	Wilson, John D	"	29
	Wyman, Johanna	"	21
	York, W. R	July	29

And upon the following-named defendants at the respective dates set opposite their names, respectively, by leaving a full, true, and correct copy thereof at the dwelling-house of each of them, with a free white person resident in the family of each of said last-named defendants in said city and county of San Francisco, to wit: Upon—

1870.

Aaron, J	July	8
Ammundsen, A	"	22
Alemany, J. S	"	26
Anglier, Pat	"	25
Agnew, John	"	25
Arnold, N. S	"	8
Argenti, Tullis	"	21
Aitken, S., (estate of,) sued as Jesse Doe	"	21
Bouchier, J	"	25
Barr, Niel	"	23
Bellisle, F. N	"	29
Brophy, John B	"	8
Bartlett, Washington	"	9
Brooks, H. S	"	29
Buster, Hiram C	"	26
Bodwell, H. H	"	21

	Brunt, Samuel	" 21
	Coney, Margaret	" 25
	Cordes, C. H	" "
	Clinton, James	" 30
	Cannon, John	" 23
	Cunningham, John	" "
	Chamberlin, C. H	" 22
	Crowley, Bart	" "
	Churchill, Clark	" "
49	Bonnell, A. C	July 21
	Boland, James	" 9
	Blanding, E. I	" 21
	Burke, Perry, sued as Jonathan Doe	" 21
	Burns, Peter, sued as Richard Doe	" 22
	Blick, Peter, sued as Adam Roe	" 23
	Bush, Charles J., sued as Jonathan Roe	" 25
	Brinkhart, Salvo, sued as Joseph Roe	" 25
	Carroll, John	" 9
	Creamer, James	" 28
	Chester, Henry	" 26
	Cusick, Thomas	" 22
	Connell, Thomas	" 22
	Davis, A. N	" 8
	Dieterle, Helen	" 8
	Domett, W'm E	" 28
	Doyle, E. H	" 21
	Dick, W'm	" 8
	Doyle, R	" 22
	Dunn, Laurence	" 21
	Denny, Edward, sued as Oliver Doe	" 22
	Cruce, William	July 22
	Capp, C. S	" 28
	Cummins, Thomas	" 8
	Carr, N. E	" 26
	Cleary, Francis D	" 22
	Chapman, Howard	" 21
	Collins, J. C	" 28
	Carter, Peter	" 26
	Clement, R. P	" 21
	Calton, David M	" 23
	Claus, Caspar, as Felix Roe	" "
	Collins, C., sued as Harry Roe	" 23
	Dougherty, James	" 26
	Dwyer, Lawrence	" 22
	Derment, John D	" 29
	Delano, R. F	" 30
	Driscoll, Tim	" 23
	Flint, M. M., sued as Andrew Doe	" 8
	Glancey, Rose	" 8
	Garrett, R	" 6
	Gender, E. F	" 29
	Gorman, Dennis	" 22
	Gallagher, H. P	" 29
	Gross, John	" 23
	Gerberding, Mary J	" 28
	Graham, Daniel	" 21

50	Drew, Edward F., sued as Andrew Roe	July 23
	Donohue, Roger, sued as Bartholomew Roe	" 23
	Doyle, W'm, sued as Isaaiah Roe	" 25
	Emery, Thomas	" 26
	Filvey, Lawrence, sued as Isaac Roe	" 25
	Ferguson, H	" 30
	Farren, J. W	" 30
	Fennessy, John	" 23
	Fennessy, D	" 28
	Folsom, Rachael A., for Miss Garrett	" 6
	Hall, Harvey	" 22
	Holmes, C. S	" 29
	Hawley, N. E	" 21
	Hamilton, J	" 25
	Hart, John	" 29
	Hawkshurst, W., sued as Christopher Doe	" 8
	Hammond, J. H., sued as Frederick Doe	" 9
	Harley, Janet, sued as Leonard Doe	" 21
	Hanlan, D., sued as James Doe	July 21
	Gay, Charles, sued as Moses Doe	" 22
	Gay, Albert C., sued as Adam Roe	" 22
	Hayes, D	" 9
	Hazard, Robert	" 29
	Hanna, Pat. R	" 23
	Haynes, Richard	" 22
	Haynes, Pat	" 23
	Hill, Robert	" 23
	Hackett, Luke	" 23
	Hann, John	" 25
	Harris, E. R	" 28
	Hagan, Edward	" 8
	Hitchcock, C. M	" 8
	Hoyt, J. T	" 8
	Jones, David A., (on ec'r)	" 27
	Johnson, Jane E	" 29
	Joost, F	" 21
	Johnson, J. F	" 21
	Jacobson, Christian, sued as Columbus Roe	" 23
	Kaskill, Adolph	" 6
	Kennedy, H	" 30
	Knowenburg, John	" 29
	Kelley, James	" 29
51	Kelwig, C., sued as Matthew Doe	" 22
	Harris, Julius, sued as Ethelbert Roe	" 23
	Hughes, James, sued as Gabriel Doe	" 21
	Hoy, Alex	" 6
	Heran, John, sued as Gilbert Doe	" 21
	Hayden, Jno. W., sued as George Doe	" 21
	Hawkins, Susan M., sued as Isaiah Doe	" 21
	Long, Michael	" 25
	Lane, Robert	" 22
	Lang, James	" 29
	Larrigan, B	" 22
	Lawton, W'm S	" 29
	Lawson, Albert, sued as Gardner Doe	" 21
	Lautewassen, Christian, sued as Marvin Doe	" 22

	Morganstern, Sam	" 6
	Maguire, Thomas G	" 29
	Moore, George	" 25
	Meyer, Jus	" 23
	Kimball, T. J	July 23
	Kelton, David M	" 29
	Keefe, Daniel	" 28
	Kelly, Francis R	" 29
	Kerr, M	" 30
	Kittredge, Geo. S	" 8
	Kingsley, E. B	" 9
	Kearn, John	" 23
	Kopenstine, N. F.	" 9
	Krauss, Charles, sued as Benjamin Roe	" 23
	Kelly, Charles, sued as Charles Roe	" 23
	Kaim, Michael, sued as Egbert Roe	" 23
	Macken, Laurence	" 21
	Manchester, John, sued as Michael Doe	" 22
	Mitchell, W'm, sued as Obadiah Doe	" "
	McManus, T	" 8
	McGarry, Edward	" "
	McManus, T. F	" "
	McGrath, Edward	" 30
	McLaughlin, B	" 25
	McDonough, James	" 29
	McEvoy, J. G	" 23
	McBride, John	" 25
		1870.
52	Murphy, W. L	July 28
	Monck, R. H	" "
	Murphy, Mary Ann	" "
	Murray, G	" 8
	Muller, W'm	" "
	Morris, J	" 9
	Moulton, Josiah	" 30
	Margan, J. S	" 21
	Moore, Joseph	" 30
	Miley, Andrew	" 21
	Murphy, W'm J	" 7
	McKee, Edward, sued as Edward Doe	" 8
	McCrunn, Edward, sued as Edwin Doe	" 8
	Minott, Hermann, sued as Gardner Roe	" 25
	Mitchell, Thomas, sued as George Roe	" "
	Manton, John, sued as Herbert Roe	" 23
	McDonald, Mich'l, sued as Benj'n Doe	" 8
	McKanley, Rose Ann, sued as Frank Doe	" 9
	McCann, Owen, sued as Gilbert Roe	" 23
	Melligan, Edward, sued	
	McLaughlin, M	July 23
	McAnnally, Hannah	" 29
	McSweeny, Mary	" "
	McPhillany, Charles	" 23
	McGreavy, John	" 8
	McCullough, Sam	" 8
	McCarthy, D. J	" 21
	Mitchell, R. W., sued as Peter Doe	" 22

	McGorry, Mich'l, sued as Alfred Roe	"	23
	McGuire, Thomas, sued as Jeremiah Roe	"	25
	Market st. R. R. Co., Charles Mayne, pres't	"	30
	O'Reilly, F. J., sued as Moses Roe	"	27
	Poppe, Charles, sued as Mannassah Doe	"	22
	Prendergast, T	"	"
	Phillips, Thomas	"	23
	Pierson, W. H	"	"
	Pepin, James	"	22
	Phillips, John	"	"
	Palmer, J	"	28
	Perkins, J. G	"	22
	Powers, Mich'l	"	29
53	Egbert Doe	July	8
	Nobbman, C	"	6
	Nolte, Carles R., sued as Joseph Doe	"	21
	O'Brien, Pat	"	22
	O'Donnell, James	"	21
	Russell, T. S	"	28
	" David	"	30
	" Andrew	"	"
	Reese, E. A	"	8
	Roberts, Augustus	"	"
	Reddish, T. J	"	28
	Rutherford, A	"	21
	Riley, Patrick	"	"
	Rutherford, T. L	"	"
	Smith, Benj'n	"	9
	Sturtevant, J	"	28
	Sullivan, Pat	"	30
	Sprague, S. S	"	"
	Sullivan, Joseph	"	23
	" Daniel	"	22
	" Dennis	"	"
	" John F	"	"
	" C	"	"
	Shackleton, W'm	"	23
	Schuerg, Geo	"	"
	Park, Eben W	July	8
	Presby, Elijah	"	"
	Peterson, James	"	29
	Pestner, E	"	8
	Phillips, W'm, sued as Henry Doe	"	21
	Postel, Peter, sued as Daniel Doe	"	8
	Regan, Jere'h	"	9
	Richardson, A. B	"	22
	Reilly, Mich'l	"	6
	Sawyer, L. W	"	22
	Snook, J. R	"	21
	Small, Isaac H	"	30
	Sawyer, A. F	"	28
	Smith, A. J., sued as Israel Doe	"	21
	Smith, W'm L., sued as Nath'l Doe	"	22
	Summers, Henry, sued as Orpheus Doe	"	22
	Schwerin, John, sued as Patterson Doe	"	"
	Sullivan, Florence J., sued as Abraham Roe	"	"

	Troy, Patrick	" 6
54	Schant, John	July 23
	Smith, Thomas	" 23
	" Charles	" 8
	Sullivan, F. D	" 8
	Schwerdt, D	" "
	Schroeder, Jno	" 23
	Walton, D. H	" 6
	Wass, A. C	" "
	Ward, W'm	" 22
	Wingard, C. W	" 8
	Wyatt, Thomas	" "
	Wheeler, H. S	" 22
	Winegar, A. B	" 21
	White, Mary E	" "
	Wynne, W	" 29
	Whittam, Matthew, sued as Nicanior Doe	" 22
	Wilson, J. B., sued as Patrick Doe	" "
	Ward, Michael, sued as John Roe	" "
	Wulzer, Annie, sued as Pat. Collins	" 7
	Whitney, Geo., sued as Columbus Doe	" 8
	Zeh, Louis	" 28
	Thurston, M. N	July 29
	Taylor, W. W	" 28
	Treat, George	" 22
	" John	" 23
	Thomas, P. J	" 28
	Skelly, Tim., sued as John Roe	" 25
	Tiernan, R., sued as G. W. Morse	" 9

San Francisco, August 11th, 1870.

W'M. GOUVERNEUR MORRIS,
U. S. Marshal,
By BENJAMIN CARVER, *Deputy.*

55 *Subpœna.*

UNITED STATES OF AMERICA:

Circuit court of the United States, ninth circuit, district of California.
In equity.

The President of the United States of America, greeting: To John A. McGlynn, David Jones, John Wool, Isaac Lankershim, Reuben Morton, John Murphy, Ann Purcell, T. Palmer, J. Higgins, P. Culley, T. McManus, Patrick Linehan, John Connor, Mary Laine, Edward McGarry, W. H. Taylor, S. C. Hastings, T. J. McManus, Margaret McMillan, Rose Clancey, J. Aaron, A. Moynehan, M. Tarpey, Pat. Hay, estate of R. J. Vandewater, deceased, Sophia J. Vandewater, executrix, T. Fagan, Jertham Regan, Henry Casey, John Carroll, D. Hayes, J. McCleaveland, C. G. Hughes, T. M. Roach, Nicholas Campbell, R. C. Atkins, T. J. Moynihan, W. W. Hance, Bernhard Gattell, R. Garratt, Alexander Hoy, D. H. Walton, Sam. Morgernstern, Adolph Haskell, C. Nobbman, William Bunce, J. S. Butters, G. Y. Loring, A. B. Richardson, Samuel A. Morrison, P. E. Brady, C. S. Moulton, R. Grier, Patrick Troy, E. A. Litchfield, W. K. Dietrich, James J. Gardner, P. McAran, D. Cony, J. J. Reichenbach, A. J. Donzell,

Charles Baum, American Russian Commercial Company, Charles Baum, president, Peter G. Patridge, B. S. Fitch, John Wigmore, Frederick Billings, Eugene Kelly, Jane E. Johnson, O. H. Keyes, Benjamin Smith, W. J. Lawey, Julius George, John Pershbaker, Charles Meyer, W'm R. Garrison, Union Lumber Association, William J. Adams, president, John L. Gardner, C. P. Head, David D. Colton, David Mahoney, James R. Dickey, Benjamin S. Brooks, John B. Felton, James Houston, O. C. Breed, John Middleton, F. Read, Edward Franklin, James Creamer, Michael Reilly, A. C. Wass, A. W. Manning, estate of J. W. Bean, deceased, John H. Morehouse, D. Bloom, X. F. Scherr, Kennedy, J. Boucher, Adolphus C. Whitcomb, H. Ferguson, H. Hilgoth, J. Mahoney, C. Mahoney, W. A. Grover, J. A. Riordan, Robert Hazard, A. Morgan, J. Morgan, Caroline Jones, Gender, Edward McGrath, B. F. Ames, J. H. Kelly, James Lyng, Jeremiah Maloney, Ann French, Ann Duffy, Samuel Crim, John Center, Isaac Wiley, Ellen Douglass, J. O'Brien, J. Lange, Charles S. Haley, J. Sturtevant, M. N. Thurston, M. Andrews, J. Vaughn, Allen Lee, J. J. Moore, Michael Kane, D. S. Witherly, Thomas J. Welsh, John Knowenburg, James Kenney, A. Livingston, Pat. Sullivan, Thomas Peyser, J. H. Hoadley, J. W. Rule, Oscar D. E. Lewis, C. Kramer, Thomas Swanton, James Thorn, S. A. Vance, Sarah Ensey, R. Bradshaw, James Behan, W. W. Taylor, C. D. Hall, William Ward, Thomas Golden, Margaret Downing, C. Hubbell, John Comerford, Hugh Kennedy, William Daken, Henry Chester, Peter Burns, L. Dwyer, Charlotte F. Gordon, Robert Lane, C. D. Hoyt, J. H. McGovern, T. Prendergast, Robert Mellon, C. M. Beckler, Thomas Cusick, H. T. Lynch, Thomas Emery, S. S. Sprague, W'm Hampshire, A. Mills, J. R. Deardoff, Cath-
57 erine Harvey, Joseph Sullivan, H. H. Noble, C. E. Lang, C. L. Wardwell, William Bluett, D.C. Dunn, Peter Dunn, H.C. Flower, O. E. Johnson, James Forbes, Thomas Connell, Joseph Hamilton, James G. Holmes, T. S. Russell, Joseph Gerze, Thomas McDonough, Rosalie Straub, D. Cavanagh, Thomas H. Porter, John C. Piercy, Louis Zeh, H. Mohan, William Freeborn, L. Roche, E. Roche, William McGarren, T. Norton, Edward Barry, H. D. Lathrop, Margaret Coney, W. R. York, M. Douglass, B. McLaughlin, A. Schenck, S. A. Vance, Andrew McManus, C. H. Cordes, Pat. Dempsey, A. Herbert, W'm McCormick, Maria Byron, Jane Clinton, J. W. Farren, William Sparks, Peter Barker, Thomas Phillips, John Brodie, Hugh Dolan, John Turnbull, W. H. Pierson, W. Sutton, J. Harkin, J. Malone, W. Barry, J. J. Dixon, T. Morton, George S. Crim, A. Bryan, Catherine Kenney, John Shea, M. Burns, W'm McMahon, Daniel Shea, Margaret Harloch, Theresa Dirks, John Connor, J. Orr, James Kelley, F. McGlancey, M. McKiernan, Jane McDonough, A. J. Rutherford, John Cunningham, D. H. Kearney, F. Odermatt, James Lang, W. A. Cory, Charlotte Watts, T. J. Kimball, Pat. R. Hanna, Richard Haynes, Robert T. Browne, Mary Sweeny, James Sullivan, Alexander Henry, David M. Kelton, David Thesserean, F. Sullivan, P. O'Brien, J. G. McEvoy, Pat. Haynes, John McBride, Pierre Blick, W'm Shackleton, Neil Barr, Joseph Pepin, Margery Bradley, James Dougherty, M. M. Laughlin, Thomas Peterson, John Downey, P. McDermott, A. Armundsen, Daniel Sullivan, Dennis Sullivan, George Schuerg, Daniel Keefe, John R. Conway, D. McMullen, John D. Dement,
58 Thomas Emery, J. H. Pickens, R. T. Delano, Francis R. Kelly, C. H. Chamberlain, T. W. Walker, Catherine Curley, H. Anderson, W'm Worfot, Joseph Lelong, John Twohig, C. F. Russer, Bart

Crowley, R. C. Monkel, P. R. O'Brien, A. Kurtz, John Meagher, Thomas G. Maguire, W. C. Ralston, John Phillips, John Sullivan, Dennis Gorman, Morris Sheahan, Clark Churchill, P. Shenkel, B. E. Arnold, Robert White, Eugene Casserly, Margaret Coleman, H. P. Gallagher, J. S. Allemany, George Kaie, Ellen Mulheam, Margaret Finlin, W. H. Sansome, John Gross, Robert Hill, Joseph Kelly, James O. Shea, T. Noonan, Charles Krause, J. Palmer, George Hermann, John C. Meyer, H. H. Shortmerier, L. F. Hoadley, W'm Cruce, J. G. Perkins, John Tenney, C. Sullivan, M. Connell, George T. Davis, Tim. Downey, John Brown, Joseph Sullivan, Dennis Brady, George E. Darling, H. A. Cobb, M. M. Gaughran, Margaret McKeon, Bridget Bushman, A. Schurwinsker, W'm Burling, Hannah McAnally, W. Laplain, M. Collins, H. A. Benjamin, Pete Johnson, Robert Keefe, Pat. Anglier, Mary A. Murray, Mary Peratski, George Moore, Mary McSweeny, Daniel Burns, Elizabeth Murray, J. F. Hannagan, Ann Winn, Lawrence Tilby, W. H. Pritchard, Mary E. Nelson, F. N. Bell isle, Hugh Dolan, Patrick Kelly, John Fennessy, Thomas Mooney, Alice Cahill, Tim. Driscoll, Ellen Sullivan, Luke Hackett, Alice Moss, Charles McPhillany, D. Fennessy, Joseph Quigley, Mary Ash, Lawrence Higgins, James Murphy, Frederick Buel, Frank McConnolly, L. Altschull, John Hahn, E. D. Carter, W. L. Murphy, Adolph C. Weber, John Schant, Jacob Price, John L. Durkee, R. H.
59 Mouck, M. Kerr, Michael Powers, M. Roull, S. A. Winall, J. W. Crawford, C. S. Clapp, John H. Turney, James T. Boyd, Lucius A. Booth, John Taylor, John Kehoe, W'm Cushman, W. H. Davis, Eben W. Park, F. Kilpatrick, John Kane, Thomas Smith, John A. Todd, Stanhope Dickinson, Job Bigwood, John Agnew, Ellen Regan, Hannah Robson, Thomas Kelly, Peter G. Peltret, W'm Corbett, John Treat, Kate Hann, M. O'Connor, Tho's Finnegan, Charles Kellett, Mary Crowell, Charles P. Gibbons, Mary Ann Murphy, John B. Brophy, J. B. Miller, Mary Ann Winall, A. U. Davis, Ira McGray, Elisha Presby, John McGeary, T. J. Winship, Andrew Russell, A. Esnault, Mary Phillips, George S. Kittredge, Thomas Byrne, Mary J. Gerberding, Joseph Boardman, "City and County of San Francisco," "Board of Education of the City and County of San Francisco," "J. Levy, Omnibus Railroad Company, president, Murray, Noble, Rose W. Crow, Edward Llewelling, Edward Sweeny, John B. Goldstone, C. McManus, Dan'l McCarthy, E. B. Kingsley, George H. Parker, E. R. Harris, J. B. Murphy, Thomas Cummings, Constantine Muller, George W. Morse, Charles Smith, Henry Fiege, James Clinton, J. P. Hoge, S. M. Wilson, James Peterson, James H. Reynolds, W. McKinney, W. Wolf, J. N. Finch, J. Morris, E. Kennedy, John Collin, Helena Dieterle, E. A. Reese, G. Blau, Sam. McCullough, John O. Earl, W. Irwin, J. B. Fry, E. Pestner, W. Welsh, Winslow, Williams, N. S. Arnold, J. G. Kittredge, John Hannigan, William Dick, Anna E. Smith, E. Sutherland, J. Rauch, Mrs.
60 L. A. Mowry, W'm Saura, Augustus Roberts, Henry Arrison, Bridget Mulharen, John M. Tully, estate of Robert Beatty, P. J. Hostel, Edward A. Hagan, R. B. Cheeseman, N. E. Carr, Joseph Tuttle, John Regan, John D. Wilson, Josiah Moulton, John M. Shotwell, C. M. Hitchcock, H. Leonard, H. Doscher, C. F. Swett, R. Finley, C. W. Weingard, Thomas Wyatt, Daniel Hicks, R. H. Schunboff, Henry Mess, Donald Grant, B. Joost, Scheper, T. D. Sullivan, S. W. Dick, Hoyt, Sears, O. F. Griffin, W. H. Graves, E. R. Harris, P. Verplanck, Ellen Crocker, A. W. Stone, W'm Welsh, Avrie Van Wie, George Treat, Henry Harms, B. Larigan, Samuel Weilhei-

mer, C. Schwart, Washington Bartlett, Henry C. Somers, Harvey T. Kellom, H. S. Wheeler, S. D. Denny, Antoine Borel, Alfred Borel, Lafayette Carpenter, L. H. Bonestell, A. Kohler, Thomas McKinstrey, Henry Christie, Ann B. Whitton, L. Englander, T. J. Reddish, Edward Denny, Pat. Cleary, Francis D. Cleary, Helen M. Benton, J. H. Pohlker, Harvey Hall, A. B. Richardson, Cordelia Raimond, George Davidson, Margaret R. De Lange, J. C. Parkinson, Thomas Noonan, H. K. Curtis, J. E. Stockler, D. A. Lancaster, E. J. Blanding, Charlotte R. Mozer, P. Doyle, S. J. Record, F. Harazthy, H. S. Brooks, W. E. Domett, James McDevitt, F. Mozer, L. A. Booth, Sarah J. Barber, H. A. Crane, P. Scheyerett, G. M. Bockius, Hiram C. Buster, E. C. Quenel, James McKew, E. Bauer, John P. Hawkins, F. Joost, H. H. Ellis, Tullis Argenti, James Devoe, jr., S. Linkton, Annie M. Winter, J. S. Morgan, C. S. Holmes, Howard Chapman, A. Rutherford, Louis Soher, "San Francisco and San José Railroad Company,"
61 E. H. Doyle, Robert White, John Schroeder, A. B. Winegar, T. H. Zeigenfuss, Eleanor Deliese, C. Moneypenny, S. B. Watson, John G. Klumpke, J. C. Collins, G. Hudson, Horton, Milford, H. J. Morton, Mary White, N. E. Hawley, R. P. Clement, N. Wynne, Mary Park, John M. Peck, J. B. Brown, H. H. Bodwell, J. E. Knowles, E. L. Maybury, W. Murray, J. W. Fuller, Samuel Brunt, F. P. McMahon, Mary T. Klopenstine, John D. Wilson, Josiah Moulton, M. D. Heckman, Peter Carter, P. J. Kennedy, P. C. Fogarty, G. W. Bell, Peter Johnson, L. W. Sawyer, A. E. Tate, W. R. Vanderslice, E. A. Wilson, Francis Blake, James Moffatt, R. Doyle, Chas. A. Barnes, W'm Matheson, E. L. Montgomery, Mary Boyle, R. E. Davis, Charles Lauterwasser, Jeanette Harley, Asa Harker, Michael Fay, Catherine Parkinson, A. C. Bonnell, Peter Bunty, Emma C. Davis, Pat. Collins, S. G. Worden, Thomas H. Douglass, John Taylor, J. J. Bauer, Lydia Morton, Daniel Graham, Samuel Foster, J. Hamilton, J. A. Snook, Edward Worth, John Kearn, Johanna Wyman, Lawrence Dunn, Joseph Moore, Isaac H. Small, D. J. McCarthy, David B. Brown, H. W. Hathorne, J. Curley, Julia Calahan, John Hart, John Hahn, J. F. Johnson, James Boland, R. White, P. Reilly, Andrew Miley, Andrew Wiley, James O'Donnell, Joseph Hughes, H. A. Crane, Cyrus D. Hoyt, Owen McCloskey, H. L. Davis, H. Maras, Mrs. C. U. Mann, and John Doe, Abraham Doe, Adam Doe, Allen Doe, Albert Doe, Andrew Doe, Benjamin Doe, Bartholomew Doe, Charles Doe, Christopher Doe, Columbus Doe, David Doe, Daniel Doe, Edward Doe, Egbert Doe, Edwin Doe, Ethelbert Doe, Frank Doe, Frederick Doe, Francisco Doe,
62 Ferdinand Doe, Felix Doe, Gabriel Doe, Gilbert Doe, Gardner Doe, George Doe, Harry Doe, Horace Doe, Hubert Doe, Isaac Doe, Isaiah Doe, Israel Doe, James Doe, John Doe, Joseph Doe, Jonathan Doe, Jeremiah Doe, Jesse Doe, Leonard Doe, Lucius Doe, Marvin Doe, Matthew Doe, Moses Doe, Mannassah Doe, Michael Doe, Nathan Doe, Nath'l Doe, Nicanor Doe, Obediah Doe, Orion Doe, Orpheus Doe, Oliver Doe, Patrick Doe, Patterson Doe, Peter Doe, Richard Doe, Robert Doe, and John Roe, Abraham Roe, Adam Roe, Allen Roe, Albert Roe, Alfred Roe, Andrew Roe, Benjamin Roe, Bartholomew Roe, Charles Roe, Chr. Roe, Columbus Roe, David Roe, Daniel Roe, Edward Roe, Egbert Roe, Edwin Roe, Ethelbert Roe, Frederick Roe, Francisco Roe, Ferdinand Roe, Felix Roe, Gabriel Roe, Gilbert Roe, Gardner Roe, George Roe, Henry Roe, Horace Roe, Herbert Roe, Isaac Roe, Isaiah Roe, Israel Roe, James Roe, Jonathan Roe, John Roe, Joseph Roe, Jeremiah Roe, Jesse Roe, Leonard Roe, Lucius Roe, Marvin Roe, Matthew Roe, Moses Roe, Mannassah Roe,

Michael Roe, Nathan Roe, Nathaniel Roe, Nicanor Roe, Obadiah Roe, Orion Roe, Orpheus Roe, Oliver Roe, Patrick Roe, Patterson Roe, Peter Roe, Richard Roe, Robert Roe:

Your are hereby commanded that you be and appear in said circuit court of the United States aforesaid, at the court-room in San Francisco, on the 8th day of August, A. D. 1870, to answer a bill of complaint exhibited against you in said court by John Kiely, and Mary Kiely his wife, in her right, George Wilson, and Ann his wife, in her right, and Ellen Lynch, who are subjects of the Queen of Great Britain and Ireland, and to do and receive what the said court shall have considered in that behalf, and this you are not to omit under the penalty of five thousand dollars.

63 Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 18th day of June, in the year of our Lord one thousand eight hundred and seventy, and of our Independence the ninety-fourth.

GEO. E. WHITNEY, *Clerk*,
[SEAL.] By L. S. B. SAWYER, *D. C.*

Memorandum pursuant to rule 12, *Supreme Court U. S.*

You are hereby requested to enter your appearance in the above suit, on or before the first day of August next, A. D. 1870, at the clerk's office of said court, pursuant to said bill, otherwise the said bill will be taken pro confesso.

GEO. E. WHITNEY, *Clerk*,
By L. S. B. SAWYER, *D. C.*

(Endorsed:) Filed on return this 11th day of August, A. D. 1870. L. S. B. Sawyer, clerk.

64 *Amendm't to bill of complaint.*

United States circuit court, district of California.

JOHN KIELEY ET AL.
vs.
JOHN H. MCGLYNN ET AL. } In equity.

By leave of the court, first had and obtained, complainant's bill is hereby amended as follows:

Commencing at page 15, line 10, of the complainant's bill, strike out the fictitious names of defendants from Adam Doe to Francisco Roe, inclusive, and strike out name of Felix Doe; also from Gilbert Doe to John Doe, inclusive; also Jonathan Doe; also the names from Jesse Doe to Adam Roe, inclusive; also the names from Albert Roe to Francisco Roe, inclusive; also from Felix Roe to Gabriel Roe, inclusive; and from Gardner Roe to Jeremiah Roe, inclusive, and strike out also the name of Michael Roe, and insert the following names respectively in their order in lieu thereof, as follows: E. Held, Antoinette Steiger, Mary Sullivan, M. M. Flint, Michael McDowell, John Scarry, Emily Barron, W. Hawxhurst, Geo. Whitney, Peter Postel, William Kock, Edward McKee, Edward Nelligan, R. McCrum, Mary Lincoln, Rose Ann McKinley, J. H. Hammond, N. C. Parish, A. Klopenstine, Jno. Heron, Albert Lawsen, John W. Hayden, William Phillips, Patrick Winn, R. P. Clem-

ent, Clara Carre, Susan M. Hawkins, A. J. Smith, D. Hanlon, Joseph Windrow, Burke Perry, S. Aitken, Janet Harley, Mary Quirk,
65 C. L. Lauterwasser, C. Hellwig, Charles Gay, Charles Poppe, John Manchester, Rufus Parker, W. L. Smith, Matthew Whittan, William Mitchell, Robert Pyne, Henry Sowers, Edward Denny, John B. Wilson, Edward Schewerin, R. W. Mitchell, Peter Burns, Henry Rumpe, Michael Walsh, F. J. Sullivan, Peter Blick, A. C. Gay, Peter O'Brien, Michael McGorry, Edward F. Drew, Charles Krause, Roger Donohue, Charles Kelly, Patrick Mulligan, C. Jacobson, L. Blumen, Elizabeth Carvalho, John D. Wanz, Adeline Perrin, R. R. Swain, Julian Harris, Margaret Burns, Claus. Casper, Nathan Simons, Herman Minott, Thomas Mitchell, C. Collins, Nelson Rock, John Manton, Filvy Laurens, William Doyle, John Hogan, Michael Keran, Charles J. Bush, Timothy Skelly, Thomas McGuire, Salvo Brinkhart.

W'M W. CHIPMAN,
Solicitor for Complainants.

(Endorsed:) Filed 17th August, 1870. L. S. B. Sawyer, clerk.

66 At a stated term of the circuit court of the United States of America for the district of California, held at the court-room in the city of San Francisco on Wednesday, the 17th day of August, in the year of our Lord one thousand eight hundred and seventy:
Present, the honorable Lorenzo Sawyer, judge.

Order to amend complaint.

JOHN KIELEY ET AL.
vs.
JOHN A. MCGLYNN ET AL.

On motion of W.W. Chipman, esq., ordered complaint herein amended by substituting real for ficticious names of certain defendants, in accordance with amendment filed herein.

I hereby certify that the foregoing is a full and true copy of an original order made and entered in the above-entitled action.
Attest my hand and seal of said court this 19th day of September, A. D. 1871.

L. S. B. SAWYER, *Clerk*,
[SEAL.] By J. F. O'BEIRNE, *Dep. Clerk*.

67 *Stip'n to discont'e as to B. of Educ'n of the city and county of San Francisco.*

In the circuit court of the United States, district of California, ninth circuit.

JOHN KIELEY ET AL., COMPLAINANTS,
vs.
JOHN A. MCGLYNN ET AL., DEFENDANTS. } In equity.

This cause is hereby discontinued and dismissed as against the Board of Education of the city and county of San Francisco, and all property

in the complaint described, claimed and occupied by said Board of Education, or by the city of San Francisco for educational purposes.

W'M W. CHIPMAN,
Sol'r for Complainants.

AUGUST 31, 1870.

(Endorsed:) Filed 1st September, 1870. L. S. B. Sawyer, clerk.

68 At a stated term of the circuit court of the United States of America for the district of California, held at the court-room in the city of San Francisco on Thursday, the 1st day of September, in the year of our Lord one thousand eight hundred and seventy:

Present, the honorable Lorenzo Sawyer, judge.

Order disc'd'e as to B. of Ed'n.

JOHN KIELEY ET AL.
vs.
JOHN A. MCGLYNN ET AL.

On motion of J. J. Williams, esq., and on filing stipulation, ordered this cause dismissed as to the Board of Education of the city and county of San Francisco.

I hereby certify that the foregoing is a full and true copy of an original order made and entered in the above-entitled action.

Attest my hand and seal of said circuit court this 19th day of September, A. D. 1871.

L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE, *Dep. Clerk.*

69 *Dismissal as to C. W. Wingard.*

In the circuit court of the United States for the district of California, ninth circuit. In equity.

JOHN KIELEY ET AL., COMPLAINANTS,
vs.
JOHN A. MCGLYNN ET AL., DEFENDANTS.

This suit is hereby discontinued and dismissed as against C. W. Wingard and the following-described property only, to wit: that certain parcel of ground bounded and described as follows: commencing at the westerly line of Valencia street 200 feet southerly from the southerly line of 23d street; thence westerly parallel with the last-mentioned line 162 feet 6 inches, to the easterly side of the old San José road; thence southerly along the said side of the San José road, and to the intersection with the northern boundary-line of the lands claimed by the "San Francisco Homestead Union;" thence easterly along said boundary-line, and its intersection with the westerly side of Valencia street; thence northerly along said line of Valencia street 221 feet 8 inches, to the point of commencement, being part of the "Red House tract," so called, in the city and county of San Francisco, California, and claimed as part of the estate of said David C. Broderick, deceased, by said compl'ts.

August 18th, 1870.

W'M W. CHIPMAN,
Sol'r for Compl'ts.

70 (Endorsed:) Filed this 5th day of September, 1870. L. S. B. Sawyer, clerk.

71 At a stated term of the circuit court of the United States of America for the district of California, held at the court-room in the city of San Francisco on Monday, the 5th day of September, in the year of our Lord one thousand eight hundred and seventy:

Present, the honorable Lorenzo Sawyer, judge.

Order dismissal as to Wingard.

JOHN KIELEY ET AL.
vs.
JOHN A. MCGLYNN ET AL.

On motion of Walter Van Dyke, esq., and on filing stipulation, ordered this cause dismissed as to defendant C. W. Wingard, and certain property in said stipulationdescribed.

I hereby certify that the foregoing is a full and true copy of an original order made and entered in the above-entitled action.

Attest my hand and seal of said circuit court this 19th day of Sept'r, A. D. 1871.

L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE, *Dep. Clk.*

72 *Answer of Daniel E. Hayes et al.*

In the circuit court of the United States, district of California. In equity.

JOHN KIELEY AND OTHERS, COMPLAINANTS,
vs.
JOHN A. MCGLYNN AND OTHERS, DEFENDANTS.

The joint and several answer of Daniel E. Hayes, John D. Wanz, A. C. Bonnell, A Roberts, C. D. Hoyt, Charles R. Moser, W'm H. Nelligan, Charles Gay, Hahn and Ohlandt, Elizabeth Carvaho, Eleanor Deliese, Patrick Cleary, Francis D. Cleary, Claus Mangels, R. McCrune, John M. Peck, John Kenney, George Davidson, Thomas Connell, E. W. Park, Mary Park, Joseph Lelong, George C. Parkinson, C. F. Ruser, Richard Doyle, T. H. Pohlker, William Welch, A. F. Sawyer, C. A. Barnes, Sarah J. Barber, J. W. Haydon, George E. Darling, E. Pestner, A. Klopenstine, Daniel Hanlon, William Phillips, S. McCullough, Edward J. Blanding, Charles H. Chamberlain, Johanna Wyman, Lawrence Dunn, H. S. Wheeler, W'm Irwin, Howard Chapman, E. L. Mayberry, James Hamilton, Daniel Graham, Patrick Thorne, Christian L. Lautewasser, Edward F. Drew, E. L. Montgomery, T. Quirk, August Amundson, Samuel Brunt, J. H. Grindley, D. B. Brown, Peter Johnson, George H. Whitney, John S. Morgan, W'm Corbett,
73 Mrs. H. M. Benton, Maugaretha D. Heckman, Hannah Robson, W'm L. Smith, John Hearn, (in the bill called John Kearn,) Adeline Perrin, Joseph E. Knowles, H. H. Bodwell, Mary Boyle, S. Weilheimer, Joseph Winrow, John A. Snook, Edward Denny, George Treat, Harvey C. Somers, Harvey T. Kellom, Tullis Argenti, E. H. Doyle, A. B. Pike, (in the bill called J. W. Fuller,) Mary Lincoln, Rose A. McKenley, Cathe' Seaver, Patrick Mulligan, Nathan E. Haw-

ley, Charles B. Elliott, Lawrence Macken, John Phillips, Matthew Whittam, Lydia Morton, Albert C. Gay, John Schout, Ashbel B. Winnegar, Lewis W. Sawyer, Thomas Kelly, James Hughes, Charles A. Bayly, William Harris, Owen McClusky, Patrick Riley, E. Schwerin, Charles R. Nolte, Margaretha Burns, W'm Walsh, A. J. Smith, S. Blumel, Walter Hawxhurst, Nicholas E. Carr, Patrick Burke, Patrick Dempsey, P. J. Thomas, D. A. Lancaster, James F. Cox, Henry A. Crane, John M. Wilson, Josiah Moulton, estate of Samuel Foster, E. Bauer, J. J. Boauer, Robert White Jacob Price, James Peterson, Mary A. Murray, W'm Mitchell, John M. Tully, Thomas H. Porter, W. Simonds, J. Burroughs, Wilson, J. T. Kimball, Timothy Driscoll, P. P. Hanna, James McKee, A. Hinke, M. Joost, Catharine Lawson, Francis Blake, James Moffatt, Henry Meares, Charles Moneypenny, John C. Meyer, Tho's H. Douglass, Francis R. Kelly, James O'Donnell, Mrs. S. Aitken, John Cannon, Peter G. Peltret, Frank W. H. Aaron, Cha's E. Lang, Catharine L. Wardwell, Philip R. Richards, L. F. Carpenter, Francis Toolin, Rufus Parker, Mary Rock, Herman Meinert, E. Roche, D. J. McCarthy, Peter Dunn, John McBride, Timothy
74 Driscoll, Ellen Sullivan, C. H. Flower, S. Dickinson, Roger Donahue, John Fennessy, D. Thersereau, John P. Downey, P. J. Kennedy, A. Lovingston, Henry Hames, D. C. Dunn, J. M. Shotwell, John O. Earl, C. H. Cordes, H. W. Hathorne, Owen McCann, L. Dwyer, James McDevitt, W'm Matheson, W'm Caldwell, James Sullivan, John Kane, Fabian Joost, R. C. Markell, Andrew Rutherford, James Quigley, Alexander Hay, Robert Pyne, Bartholomew Crowley, James Murphey, Bartholomew Lorigan, W'm McCormick, J. H. Small, James Bell, Anthony Mogan, Mich'l Powers, Patrick Doyle, Jeanette Harly, Michael Sweeney, James H. Hesse, L. A. Booth, Catharine Connolly, John Schroder, James Dougherty, P. McDermott, W'm H. Gabb, jr., Ezekiel S. Gabb, John Bourne, Samuel B. Watson, Hugh Dolan, R. T. Delano, Richard Strothoff, Lewis Soher, Mrs. Miley, (widow of Andrew Miley,) John C. Dement, Thomas Emery, and Josephine Adeline Clare Carre.

These defendants, now and at all times hereafter saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, these defendants answering, say, that they have been informed, and believe it to be true, that on the 16th day of September,
1859, said David C. Broderick died seized of certain real and
75 personal property, situate in said State and district; but these defendants, upon their information and belief, say that they deny that said Broderick died intestate.

But these defendants, further answering, say that they do not know, and have not been informed, save by the complainants' said bill, and cannot set forth as to their belief or otherwise, whether or not the said complainants, Mary Kieley, Anna Wilson, and Ellen Lynch, or any of them, were, at the death of the said Broderick, his next of kin and only heirs at law, or whether or not they or any of them were related to the said Broderick, or were or are his heirs at law, but admit that they were.

And these defendants, further severally answering, say that they deny that the said David C. Broderick at the time of his death was seized in

his demesne of fee or otherwise of that particular part, parcel, or tract of real estate mentioned and described in said complainants' bill of complaint as a lott of land commencing at a point on the old road from the Mission Dolores to the Pueblo of San José, at the southwesterly corner of lands formerly occupied by one A. A. Green, and about 150 yards in a southerly direction from where said Green's house (formerly known as the Pavillion,) stood, running thence south, along said road,
600 yards to a small creek; thence along said creek, and in an
76 easterly direction about 1,600 yards, to a bluff on an arm of the bay of San Francisco; thence north in a direct line across said arm, to the eastern wall of lands of said mission, known as the "Potrero wall;" thence along said wall north about 700 yards to northern line fence established between said premises and lands of R. G. Perkins; and thence west along said line fence in a direct line about 1,300 yards to a point of beginning, being the tract of land commonly known as the "Pioneer race-course tract."

And these defendants, severally answering, say that on or about the 16th day of June, 1853, and during the life-time of the said David C. Broderick, he, the said David C. Broderick, for a good and sufficient consideration to him paid, conveyed by deed all his right, title, interest, and estate in and to said above-described tract of land to one George W. Wright, from whom through mesne conveyances these defendants severally deraign title to the separate and distinct parts and parcels of said land which they severally occupy.

And these defendants, severally answering, say that since said 16th day of June, 1853, neither the said Broderick, nor his heirs, executors, or administrators, have had any right, title, or interest in or to said above-described tract of land or to any part or portion thereof.

And these defendants, further severally answering, say that the complainants, nor any of them, nor any of their ancestors, predecessors,
or grantors, were not seized or possessed of the above-described
77 premises within five years before said complainants' bill herein was filed.

And these defendants, further severally answering, say that they, and each of them, and their grantors, and each of their grantors, under whom they and each of them claim said premises, and every part and portion thereof, entered into the possession of said premises and every part and portion thereof, founding said claim upon said written conveyance of said David C. Broderick above mentioned, as being a conveyance of said premises, and that there has been a continued occupation and possession of said premises under said conveyance by these defendants, and each and every of them, and their grantors, and each and every of them, for a period of more than five years before the said bill of the said complainants herein was filed; and that during that entire period said premises have been protected by a substantial enclosure.

And these defendants, further severally answering, say that the said will and testament in writing of the said David C. Broderick, in the said complainants' said bill of complaint mentioned and set forth, bearing date on the 2nd day of January, 1859, was, on the 20th day of February, 1860, duly presented to the probate court of the said city and county of San Francisco, by John A. McGlynn and Andrew J. Butler, two of the executors named therein, with their petition setting forth the
facts necessary to give said probate court jurisdiction thereof, and
78 praying that said will might be admitted to probate and that letters testamentary might be issued to them; that thereupon said probate court duly appointed the 12th day of March, 1860, as the time for

proving said will, and caused due notice thereof to be given by the clerk of said court, by publication in a newspaper printed in said city and county; that on said last-mentioned day various persons claiming to be heirs of said Broderick appeared in said probate court, and filed therein their objections in writing to having said bill admitted to probate, on the ground that it was false, simulated, and a forgery; that the hearing of said issues was continued by said probate court from time to time until the 8th day of October, 1860, when said probate court, after due consideration, duly admitted said will to probate, and that the judgment and order of said probate court admitting said will to probate is in full force, and has never been appealed from, changed, modified, vacated, or reversed.

And these defendants, further severally answering, say that the above-described tract of land and every part and portion thereof is situated in the peninsula of San Francisco, and within the present corporate limits of said city and county of San Francisco, and above the natural ordinary high-water mark of the bay of San Francisco and the Pacific Ocean, as the same existed on the seventh day of July, eighteen hundred and forty-six, and without the corporate limits of the city of San Francisco, as defined in the act to re-incorporate the said city, passed by the
79 legislature of California, on the fifteenth day of April, eighteen hundred and fifty-one, and not reserved to the United States, and that these defendants, and each and every of them, have complied, in all respects, with all the provisions of an order of the board of supervisors of the said city and county of San Francisco, entitled "Order No. 800," an order for the settlement and quieting title to land in the city and county of San Francisco situate above high-water mark of the bay of San Francisco and the Pacific Ocean, and without the corporate limits of the city of San Francisco, approved by the mayor and president of said board of supervisors, on the fourteenth day of January, eighteen hundred and sixty-eight, and confirmed by an act of the legislature of the State of California, entitled "An act to confirm a certain order passed by the board of supervisors of *of* the city and county of San Francisco, approved March 27th, 1868;" and the said city and county of San Francisco, after the passage of the said act, and before the bill of the complainants herein was filed, duly relinquished, granted, and conveyed to these defendants, and to each and every of them, all the right, title, and claim which the said city or county then had, or might thereafter acquire, to said above-described tract of land, and to every part and portion thereof which these defendants, and each and every of them, held, occupied, and possessed at the time of filing said bill of complaint herein, and that these defendants still hold and own all the right,
80 title, and claim which said city, at the date of said order, No. 800, had in and to said above-described tract of land, and to each and every part thereof.

And these defendants, further severally answering, say that they, or any or either of them, to the knowledge or belief of the others, or either of them, do not know, and have never been informed, save by the said complainants' bill, and do not in their consciences believe, that the said paper writing, set forth and referred to in said complainants' bill, and purporting to be a last will and testament, was, or is, a simulated or forged instrument, or was not the last will and testament of the said David C. Broderick, or was not signed, declared, and published as such by him.

And these defendants, further severally answering, say that they, or any or either of them, to the knowledge or belief of the others, or other of them, do not know, and have never been informed, save by the com-

plainants' bill, and do not in their consciences believe, that the said will was fabricated, or that it was written by one Alfred A. Phillips in New York or elsewhere about the first day of January, 1860, or at any other time, or that the name of D. C. Broderick was signed thereto by one Moses E. Flanagan, or that the said Andrew J. Butler knew the same to be a forgery, or that he procured any witnesses to swear to the validity of said will, or that he, by such testimony, procured the
81 admission of said will to probate, and the recognition of said McGlynn and himself as executors; but these defendants, and each and every of them, have been informed and believe that said will, set forth and referred to in said complainants' said bill, was duly proved and admitted to probate, and that the said Butler and McGlynn, named in said will as executors thereof, duly qualified & acted as such, and as such did sell the whole of said estate by virtue of orders of said probate court.

And these defendants severally deny all and all manner of unlawful combination and confederacy wherewith they or any of them are by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainants' said bill of complaint contained, material or necessary for these defendants or any of them to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true to the knowledge or belief of these defendants or any of them.

All which matters and things these defendants, and each and every of them, are ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

SHARPSTEIN & HASTINGS,
Sol'rs for Defendants.

J. R. SHARPSTEIN,
Of Counsel.

82 (Endorsed:) Due service admitted, and the signing of the answer of the within-named defendants and their oath thereto are hereby waived.
September 10, 1870.

W'M W. CHIPMAN,
Sol'r for Complainants.

Filed 10th September, 1870. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep. clerk.

83 *C. Churchill' demurrer.*

UNITED STATES OF AMERICA:
Circuit court of the United States, district of California.

JOHN KIELEY AND MARY KIELEY, HIS WIFE, IN her right, George Wilson and Ann Wilson, his wife, in her right, and Ellen Lynch, complainants,
vs.
JOHN A. MCGLYNN AND OTHERS, DEFENDANTS.
} No. 849. In equity.

The demurrer of Clark Churchill, one of the defendants, to the bill of complaint of the above-named complainants.

This defendant, by protestation, not confessing or acknowledging all

or any of the matters and things in the said bill of complaint contained to be true, in such manner and form as the same are therein and thereby set forth and alledged, doth demur in law to the said bill, and for cause of demurrer showeth that the said complainants have not, by their said bill, made such a case as entitles them to any discovery or relief from or against this defendant, touching the matters contained in the said bill or any of such matters.

Wherefore, and for divers other good causes of demurrer ap-
84 pearing in the said bill of complaint, this defendant doth demur to the said bill, and all the matters and things therein contained, and prays the judgments of this honorable court whether he shall be compelled to make any further or other answer to the said bill, and he humbly prays to be hence dismissed with his reasonable costs in this behalf sustained.

J. H. MEREDITH,
Sol'r for Defendant Churchill.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

J. H. MEREDITH,
Of Counsel for Defendant Churchill.

UNITED STATES OF AMERICA,
State of California, City and County of San Francisco, ss:

Clark Churchill, being first duly sworn, deposes and says that he is the defendant in the foregoing demurrer, and that the same is not interposed for delay.

CLARK CHURCHILL.

Subscribed and sworn to before me this 17th day of September, A. D. 1870.

L. S. B. SAWYER,
Com'r U. S. Cir. C't, &c.

85 (Endorsed:) Service of the within demurrer is hereby admitted this 17th day of September, A. D. 1870.

W'M W. CHIPMAN,
Sol'r for Complainants.

Filed this 19th day of September, 1870. L. S. B. Sawyer, clerk.

86 *P. G. Partridge.—Dismissal.*

In the circuit court of the United States for the district of California.

JOHN KIELEY ET AL.
vs.
JOHN A. MCGLYNN ET AL. } In equity.

The complainants in this cause, by their solicitor, hereby dismiss the action with the consent of the court, and an order may be entered herein to that effect as against the defendant, P. G. Partridge only, and as to that parcel of ground only described as follows, to wit: 45½ feet front on the southwesterly side of Stewart street, between Market and Mission streets, in San Francisco, having a frontage of 45½ feet on Stewart street by 137½ feet in depth, and being known as water-lot number 621

(six hundred and twenty-one) on the official map of San Francisco, California.

W'M W. CHIPMAN,
Sol'r for Complainants, 17 *Exchange Buildings, San Francisco.*

(Endorsed:) Filed September 21st, 1870. L. S. B. Sawyer, clerk, by J. F. O'Beirne, D. C.

87 At a stated term of the circuit court of the United States of America for the district of California, held at the court-room in the city of San Francisco, on Thursday, the 22nd day of September, in the year of our Lord one thousand eight hundred and seventy:
Present, the honorable Lorenzo Sawyer, judge.

Order.—Dismissal as to P. G. Partridge.

JOHN KIELEY ET AL.
vs.
JOHN A. MCGLYNN ET AL.

On motion of S. V. Smith, esq., and on filing stipulation, ordered, that this cause dismissed, as per stipulation filed 21st September, 1870.

I hereby certify that the foregoing is a full and true copy of an original order made and entered in the above-entitled action.
Attest my hand and the seal of said circuit court this 19th day of September, A. D. 1870.
[SEAL.]

L. S. B. SAWYER, *Clerk.*
By J. F. O'BEIRNE, *Dep. Clerk.*

88 At a stated term of the circuit court of the United States of America for the district of California, held at the court-room in the city of San Francisco, on Monday, the 3d day of October, in the year of our Lord one thousand eight hundred and seventy:
Present, the honorable Lorenzo Sawyer, judge.

Patridge.—Plea dismissed.

JOHN KIELEY ET AL.
vs.
JOHN A. MCGLYNN ET AL.

Ordered, plea of defendant P. C. Partridge dismissed.

I hereby certify that the foregoing is a full and true copy of an original order made and entered in the above-entitled action.
Attest my hand and seal of said circuit court this 19th day of September, A. D. 1870.

LORENZO S. B. SAWYER, *Clerk,*
By J. F. O'BEIRNE, *Dep. Clerk.*

89 *Replication to answer of Daniel E. Hayes & al.*

In the circuit court of the United States for the district of California, ninth circuit.

JOHN KIELEY ET AL., COMPLAINANTS,
JOHN A. MCGLYNN ET AL., DEFENDANTS. } In equity.

The replication of Mary Kieley and John Kieley, Ann Wilson and George Wilson, and Ellen Lynch, complainants, to the answer of Daniel E. Hayes and other defendants, represented by Messrs. Sharpstein and Hastings, their sol'rs therein.

These repliants, saving and reserving to themselves now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say that they will aver, maintain, and prove their bill of complaint to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by these repliants without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, con-
90 fessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

W'M W. CHIPMAN,
Sol'r for Complainants, No. 17 Exchange Buildings, San Francisco.

(Endorsed:)
Received, October 3d, 1870, copy of within.
SHARPSTEIN AND HASTINGS,
Attorney' for Defendants Haynes et al.

Filed this 3d October, 1870. L. S. B. Sawyer, clerk.

91 *Answer of Theresa Dirks & al.*

UNITED STATES OF AMERICA:

Circuit court of the United States, ninth circuit, district of California.
In equity.

JOHN KIELEY ET AL.
vs.
JOHN A. MCGLYNN ET AL. }

Come now Theresa Dirks, George Schuerg, John Shea, Michael Connell, Thomas D. Sullivan, W'm Sparks, Patrick Collins, Joel Hower, Mary McMahon, C. Sullivan, Thomas J. Dixon, James Papin, John Brodie, W'm H. Pierson, James Orr, Michael McGorey, Lawrence Felvey, Salvo Buricalt, Bridget Bowman, W'm J. Strand, Patrick Anglin, John Denny, Peter O'Brien, D. M. Kelton, John Malone, Thomas Morton, Ja's Sullivan, W'm H. Sansome, Geo. Moore, Ja's G. McEvoy, Margaret

Cooney, Luke Hackett, Peter Shenkel, Joseph Sullivan, Michael Collins, Charles U. Horton, Mary Cooney, Thomas Phillips, Patrick McCabe, Peter Blake, J. H. Holmes, Timothy Shelly, Thomas McGuire, Joseph Zerse, Thomas Connell, Michael Long, W'm Doyle, Patrick Haynes, Michael Thiernan, Edward Cruise, Edward McGuiness, Phillip McGovern, John Cunningham, Andrew Dooley, Anthony Schuminker, J. G. Perkins, Patrick McLaughlin, Neill Barr, John Gross, Margaret Harlock, W. A. Cory, Andrew McManus, Mary Britsky, Joseph Carlow, John Davie, Robert Hill, Z. M. Cherowing, and, answering unto
92 the complainants' bill of complaint, herein severally say, deny, and aver, to wit:

The defendants, and each of them, deny each and every, all and particular, the charges, allegations, matters, and things in the bill of complaint set forth, save and except such as are specially admitted herein.

These defendants severally, now and at all times hereafter saving and reserving to themselves, and each of them, all benefit and advantage of exception which can or may be had or taken to the many uncertainties and other imperfections in said bill of complaint, for answer thereunto, or to so much thereof as defendants are advised is or are marial or necessary for them to make answer unto, answering, say:

They are severally informed, and believe it to be true, that, on the 16th day of December, 1859, David C. Broderick died seized and possessed of certain real and personal estate in the city and county of San Francisco situate and being; but they severally deny, upon information and belief, that said Broderick died intestate.

And they severally say that they are not informed that the complainants hereto were or are next of kin to said Broderick, or were or are his heirs at law, or otherwise, or as alledged by plaintiffs, and defendants in this relation neither admit or deny the allegation, but require proof of the truth thereof.

And defendants severally deny that the said Broderick, at his
93 death, was seized in his demesne, or in fee, or otherwise of such parts of the lands, or any part thereof, as are described in complainants' complaint, as are hereinafter described and designated as owned and held by these defendants severally; but defendants severally aver that they are the owners in fee and in possession of the separate lots or parcels of land hereinafter described as owned and possessed by each of these defendants in severalty by virtue of a certain conveyance in fee-simple absolute, executed and delivered by said David C. Broderick in his life-time, and by certain mesne conveyances by his grantees and grantee successor and successors, for a good, a valuable, and sufficient consideration to him and to them paid by these defendants and their several grantors and predecessors; and the several tracts of land so acquired, owned, and possessed by these defendants, and so still and now held and owned, are by each described and bounded as follows, to wit, with the full designation preceding said seperate descriptions of the right of claim of these several defendants; and these several def'ts do allege and *say*, in detail, to set forth said descriptions severally and each for himself and herself respectively.

That defendant Anthony Schumiker is the owner and is seized in fee and is in possession of that certain lot of land being in the city
94 and county of San Francisco and State of California, bounded as follows, to wit: commencing on the westerly line of York street, at a point distant southerly 234 feet from the southwesterly corner of York and Park streets; thence westerly one hundred feet; thence at right angles southerly twenty-six feet; thence at right an-

gles easterly one hundred feet; thence at right angles northerly twenty-six feet, to the point of commencement.

That defendant Margaret Harlock is a femme sole, and in her own right is the owner and seized in fee and is in the possession of that certain lot of land being in the city and county of San Francisco and State of California, bounded and described as follows, to wit: commencing at a point on the west side of Bryant street, distant 30 feet southerly from the southwesterly corner of 23d, or Horner, and Bryant streets, and running thence southerly along said line of Bryant street twenty-six feet; thence at right angles westerly one hundred and twenty feet; thence at right angles northerly twenty-six feet; thence at right angles easterly one hundred and twenty feet, to point of commencement.

That defendant Michael McGorey is the owner and is seized in fee and is in possession of that certain lot of land being in the city and county of San Francisco and State of California, bounded as follows, to wit:

95 commencing *California bounded as follows, to wit: commencing* on the west side of Alabama street one hundred and four (104) feet south from the southwestern corner of Alabama and Twenty-fourth streets; thence south twenty-six (26) feet; thence west one hundred (100) feet; thence north twenty-six (26) feet; thence east one hundred (100) feet, to the point of beginning.

That defendant James Orr is the owner and is seized in fee and is in possession of that certain lot of land being in the city and county of San Francisco and State of California, bounded as follows, to wit: commencing at a point on the southeasterly corner of Columbia and Horner streets, and running thence easterly, along the southerly line of Horner street, twenty-five (25) feet; thence at right angles southerly one hundred and four (104) feet; thence at right angles westerly and parallel with Horner street twenty-five (25) feet to the easterly line of Columbia street; thence northerly along Columbia street one hundred and four (104) feet, to the point of commencement.

That defendant W'm H. Pierson is the owner and is seized in fee and is in possession of that certain lot of land being in the city and county of San Francisco and State of California, bounded as follows, to wit:

96 commencing at a point on the easterly line of Bryant street, distant one hundred and thirty (130) feet northerly from the north line of Park or 24th street, and running thence northerly on said line of Bryant street twenty-six (26) feet; thence at right angles easterly one hundred (100) feet; thence at right angles southerly, and parallel with Bryant street, twenty-six (26) feet; thence at right angles westerly one hundred (100) feet, to the point of commencement. Being portion of block No. 6, of the tract commonly known as the Treat tract.

That defendant John Brodie is the owner and is seized in fee and is in possession of that certain lot of land being in the city and county of San Francisco and State of California, bounded as follows, to wit: commencing at a point on the easterly line of Bryant street distant two hundred and eight (208) feet northerly from the north line of Park or 24th street, and running thence northerly on said line of Bryant street, twenty-six (26) feet; thence at right angles easterly one hundred (100) feet; thence at right angles southerly, and parallel with Bryant street, twenty-six (26) feet; thence at right angles westerly one hundred (100) feet, to the point of commencement.

That defendant Patrick McLaughlin is the owner and is seized in fee and is in possession of that certain lot of land in the city and county of San Francisco and State of California, bounded as follows, to

97 wit: commencing on the westerly line of York street at a point

distant southerly 208 feet from the southwesterly corner of York and Park streets; thence westerly one hundred feet; thence at right angles southerly twenty-six feet; thence at right angles easterly one hundred feet; thence at right angles northerly twenty-six feet, to the point of commencement.

That defendant Neill Bar is the owner and is seized in fee and is in possession of that certain lot of land in the city and county of San Francisco and State of California, bounded as follows, to wit: commencing on the easterly line of Harrison street, distant 416 feet northerly from the northerly line of Park, thence easterly seventy-five feet; thence northerly to line of Treat tract; thence southerly seventy-eight feet to Harrison st.; thence south thirty-eight feet and nine inches, to the point of commencement.

That defendant James Papin is the owner and is seized in fee and is in possession of that certain lot of land being in the city and county of San Francisco and State of California, bounded as follows: commencing at a point on the easterly line of Harrison street, distant one hundred and fifty-six (156) feet southerly from the south-
98 easterly corner of Harrison and Horner or 23d streets; thence running southerly along the easterly line of Harrison street, twenty-six (26) feet; thence at right angles easterly, and parallel with 23d or Horner street, one hundred (100) feet; thence at right angles northerly, and parallel with Harrison street, twenty-six (26) feet; thence at right angles, *hence at right angles* westerly, and parallel with 23d or Horner street, one hundred (100) feet to the easterly line of Harrison street, the point of commencement; being in block bounded by Harrison, 24th or Park, Alabama, 23d or Horner sts.

That defendant Thomas J. Dixon is the owner and is seized in fee and is possession of that certain lot land being in the city and county of San Francisco and State of California, bounded as follows, to wit: commencing at a point on the northerly line of 24th street, one hundred (100) feet easterly from the northeast corner of Bryant and 24th streets; running thence northerly on a line with Bryant street one hundred and four (104) feet; thence easterly parallel with 24th street, fifty (50) feet; thence southerly one hundred and four (104) feet to 24th street; thence westerly along said northerly line of 24th street fifty (50) feet, to point of commencement.

That defendant W'm Sparks is the owner and is seized in fee and is in possession of that certain lot of land, being in the city and
99 county of San Francisco, and State of California, bounded as follows, to wit:

Commencing at a point on the easterly line of Bryant street, distant two hundred and eighty-six feet northerly from the north line of Park or 24th street, and running thence northerly on said line of Bryant street twenty-six (26) feet; thence at right angles easterly one hundred (100) feet; thence at a right angle southerly, and parallel with Bryant street, twenty-six (26) feet; thence at right angle westerly one hundred feet, to the point of commencement, portion of block No. 6 of the tract commonly known as the Treat tract.

That defendant Thomas D. Sullivan is the owner and is seized in fee and is in possession of that certain lot of land being in the city and county of San Francisco and State of California, bounded as follows, to wit:

Commencing at the northeast corner of the old San José road and Twenty-fourth street; thence east ninety feet; thence northerly eighty-four feet and eleven inches; thence westerly ninety feet and six inches;

thence southwesterly seventy feet and eight inches, to the point of commencement.

That defendant David M. Kelton is the owner and is seized in fee and is in possession of that certain lot of land being in the city
100 and county of San Francisco and State of California, bounded as follows, to wit:

Commencing at a point on the west line of Alabama street, distant two hundred and twenty-one (221) feet northerly from the northeasterly corner of Alabama and Park or Twenty-fourth street; thence running northerly along the west line of Alabama street thirty-nine feet; thence at right angles westerly and parallel with Park street one hundred feet; thence at right angles southerly, and parallel with Alabama street, thirty-nine feet; thence at right angles easterly, and parallel with Park street, one hundred feet, to the west line of Alabama street, the point of commencement, being in block bounded by Alabama, Horner, (or 23d,) Harrison, and Park (or 24th) street.

That defendant Michael Collins is the owner and is seized in fee and is in possession of that certain lot of land being in the city and county of San Francisco and State of California, bounded as follows, to wit:

Commencing at a point on the westerly line of York street, distant southerly one hundred and four feet from the southwesterly corner of York street and Parker or 24th street; thence running southerly along said York street twenty-six feet; thence at right angles westerly one hundred feet; thence at right angles northerly twenty-six feet; thence at right angles easterly one hundred feet, to the place of commencement.

101 That defendant John Tenny is the owner and is seized in fee and is in possession of that certain lot of land being in the city and county of San Francisco and State of California, bounded as follows, to wit:

Commencing at the southeast corner of Harrison and Park or 24th streets; thence running easterly along said line of Park or 24th street fifty (50) feet; thence at right angles southerly one hundred and four (104) feet; thence at right angles westerly fifty (50) feet; thence at right angles northerly, along the line of Harrison street, one hundred and four (104) to point of beginning, being a portion of block 174 of the Treat tract.

That defendant Patrick Anglier is the owner and is seized in fee and is in possession of that certain lot of land being in the city and county of San Francisco and State of California, bounded as follows, to wit:

Commencing at a point on the easterly line of Bryant street, distant southerly two hundred and eight (208) feet from the southeasterly corner of Park or 24th and Bryant st's; thence running southerly along said line of Bryant street seventy-eight (78) feet; thence at right angles easterly, and parallel with Park or 24th street, one hundred (100) feet; thence at right angles northerly, and parallel with Bryant street, seventy-eight (78) feet; thence at right angles westerly one hundred (100) feet, to the point of commencement.

102 That defendant Salvo Brincalt is the owner and is seized in fee and is in possession of that certain lot of land being in the city and county of San Francisco and State of California, bounded as follows, to wit:

Commencing at a point on the westerly line of Potrero avenue, distant one hundred and forty-five (145) feet northerly from the northerly line of Twenty-third street; thence running northerly along said line of Potrero avenue twenty-five (25) feet; thence at right angles westerly

one hundred (100) feet; thence at right angles southerly, and parallel with Potrero avenue, twenty-five (25) feet; thence at right angles easterly one hundred (100) feet to the point of commencement, being known as lot No. 7 in block No. fifty-seven (57) of the Treat tract.

That defendant Lawrence Felvey is the owner and is seized in fee and is in possession of that certain lot of land being in the city and county of San Francisco and State of California, bounded as follows, to wit:

Commencing at a point on the westerly line of Bryant street, distant northerly one hundred and thirty (130) feet from the northwesterly course of Bryant and Temple, or 25th, streets; thence running northerly along said line of Bryant street one hundred and four (104) feet; thence at right angles westerly, and parallel with Temple, or 25th, street, one hundred (100) feet; thence at right angles southerly,
103 and parallel with Bryant street, one hundred and four (104) feet; thence at right angles easterly one hundred (100) feet to the point of commencement, being a portion of block 22, Treat tract.

That defendant Mary Piratsky is a femme sole, and in her own right is the owner and is seized in fee and is in possession of that certain lot of land being in the city and county of San Francisco and State of California, bounded and described as follows, to wit:

Commencing at a point on the easterly line of Bryant street, distant northerly one hundred and fifty-six feet from the northeasterly corner of Bryant and Temple (or 25th) streets; thence running northerly along said line of Bryant street fifty-two feet; thence at right angles easterly, parallel with Temple street, one hundred feet; thence at right angles southerly, parallel with Bryant street, fifty-two feet; thence at right angles westerly one hundred feet to the place of beginning, being a part of block 23 of the Treat tract.

That defendants Joseph Catton and John Davie are jointly the owners and are seized in fee and are in possession of that certain lot of land being in the city and county of San Francisco and State of California, bounded and described as follows, to wit:

104 Commencing at a point on the westerly line of Potrero avenue, distant northerly one hundred and seventy feet from the northwesterly corner of Potrero avenue and Horner streets; and running thence northerly along the said westerly line of Potrero avenue twenty-five feet; thence at right angles westerly, and parallel with John or 22nd street, one hundred feet; thence at right angles southerly, and parallel with Potrero avenue, 25 feet; thence at right angles easterly, and parallel with Horner or 23d street, one hundred feet to the westerly line of Potrero avenue and point of commencement.

That defendant George Schuerg is the owner and is seized in fee and is in the possession of that certain lot of land being in the city and county of San Francisco and State of California, bounded as follows:

Commencing at a point on the north line of Park (or 24th) street, distant fifty (50) feet easterly from the northeast corner of Harrison and Park, or 24th, streets; thence running along the line of Park, or 24th, streets, easterly twenty-five (25) feet; thence at right angles northerly one hundred and four (104) feet; thence at right angles parallel with Park (or 24th) street, westerly twenty-five (25) feet; thence at right angles southerly one hundred and four (104) feet to the place of beginning.

105 That defendant Theresa Dirks is the owner and is seized in fee and is in possession, in her own right and as her separate property, of that certain lot of land being in the city and county of San Francisco, State of California, bounded as follows, to wit:

Commencing on the southwest corner of Bryant and Horner streets; running thence westerly from said corner on the line of Horner street, one hundred and fifty feet; thence southerly one hundred and four feet at right angles to Horner street; thence parallel with Horner street one hundred and fifty feet easterly; thence northerly one hundred and fifty feet to place of beginning.

That defendant John Malone is the owner and is seized in fee and in possession of that certain lot of land being in the city and county of San Francisco and State of California, bounded as follows, to wit:

Commencing at a point on the line of Park or 24th st., fifty (50) feet easterly from Bryant street, and running thence easterly twenty-five (25) feet; thence at a right angle parallel with Bryant st. northerly one hundred and four (104) feet; thence at a right angle westerly twenty-five (25) feet; thence a right angle southerly one hundred and four (104) feet to the point of commencement, being a portion of block six, (6,) commonly known as the Treat tract.

106 That defendant Charles W. Horton is the owner and is seized in fee and is in possession of that certain lot of land being in the city and county of San Francisco and State of California, bounded as follows, to wit:

Lot on easterly line of York st., commencing at a point distant one hundred and fifty (150) feet from the southerly line of 22nd street; thence southerly twenty-five (25) feet; thence easterly one hundred (100) feet; thence northerly twenty-five (25) feet; thence westerly one hundred (100) feet, to the point of beginning.

That defendant James Sullivan is the owner and is seized in fee and is in the possession of that certain lot of land being in the city and county of San Francisco and State of California, bounded as follows, to wit:

Beginning at a point on the northerly side of Temple street or 25th street, distant westerly twenty-five (25) feet from the northwesterly corner of said Temple street and Alabama street; thence westerly along said Temple street fifty (50) feet; thence at right angles northerly one hundred and four (104) feet; thence at right angles easterly fifty (50) feet; thence at right angles southerly one hundred and four (104) feet, to the place of beginning, being in the block No. 539.

107 That defendant Mary Cooney is a femme sole, and in her own right is the owner and is seized in fee and is in the possession of that certain lot of land being in the city and county of San Francisco and State of California, and bounded as follows, to wit:

Commencing at a point distant one hundred and seventy-five (175) feet from the southerly line of 22d street; thence southerly twenty-five (25) feet; thence easterly one hundred (100) feet; thence northerly twenty-five (25) feet; thence westerly one hundred (100) feet to the point of beginning.

That defendant W'm Henry Sansome is the owner and is seized in fee and is in possession of that certain lot of land being in the city and county of San Francisco and State of California, bounded as follows, to wit:

Commencing on the southerly side of 24th st., one hundred feet west from the west side of Columbia street; thence west 27 feet at right angles to 24th street; thence south at right angles 104 feet; thence east at right angles 27 feet; thence northerly 104 feet at right angles, to the point of commencement.

That defendant Thomas Phillips is the owner and is seized in fee and is in possession of that certain lot of land being in the city and county of San Francisco and State of California, bounded as follows, to wit:

108 Commencing at a point on the east side of Bryant street two hundred and thirty-four (234) feet northerly from the northerly side of Park or 24th st., and running thence northerly along said line of Bryant street twenty-six (26) feet; thence at right angles easterly one hundred (100) feet; thence at right angles southerly twenty-six (26) feet; thence at right angles westerly one hundred feet, to the point of beginning.

That defendants Edward Maginiss and Phillip H. McGovern are the owners jointly, and are jointly seized in fee and are jointly in possession of that certain lot of land being in the city and county of San Francisco and State of California, and bounded as follows, to wit:

Commencing on the southwesterly corner of Alabama and 24th streets; thence south on Alabama street one hundred and four feet; thence west twenty-five feet; thence north one hundred and four feet; thence easterly twenty-five feet, to the place of beginning.

That defendant Andrew Dooly is the owner and is seized in fee and is in the possession of that certain lot of land being in the city and county of San Francisco and State of California, and bounded and described as follows, to wit:

109 Commencing at the southeasterly corner of York and 25th streets; thence easterly on Twenty-fifth street one hundred feet; thence at right angles southerly one hundred and forty feet; thence at right angles westerly, one hundred feet; thence at right angles northerly one hundred and forty feet, to the point of commencement.

That defendant W'm J. Strand is the owner and is seized in fee and is in possession of that certain lot of land being in the city and county of San Francisco and State of California, and bounded as follows, to wit:

Commencing at a point on the westerly line of Hampshire st., two hundred and eight (208) feet northerly from Park or 24th st., and running thence northerly along said line of Hampshire st. twenty-six (26) feet; thence at right angles westerly one hundred (100) feet; thence at right angles southerly 26 feet; thence at right angles easterly one hundred (100) feet to Hampshire st., to point of beginning, being a portion of block 5.

The defendant Bridget Bowman is a femme sole, and in her own right is the owner and is seized in fee and is in possession of that certain lot of land in the city and county of San Francisco and State of California, bounded as follows, to wit:

Commencing at a point on the westerly line of York street distant southerly two hundred and sixty (260) feet from the southwesterly
110 corner of York and Park or 24th streets; thence running southerly along said line of York street twenty-six (26) feet; thence at right angles westerly, and parallel with Park or 24th st., one hundred (100) feet; thence at right angles northerly, and parallel with York st, 26 feet; thence at right angles easterly one hundred (100) feet, to the point of beginning.

That defendant Joel Hower is the owner and is seized in fee and is in possession of that certain lot of land being in the city and county of San Francisco and State of California, and bounded as follows, to wit:

Commencing at a point on the south side of 23d or Horner street, dis-

tant seventy-five (75) feet westerly from the southwesterly corner of York and 23d or Horner st's; thence running westerly twenty-five (25) feet on said line of 23d or Horner street; thence at right angles southerly one hundred and four (104) feet; thence at a right angle parallel with 23d or Horner st. easterly twenty-five (25) feet; thence at a right angle parallel with York st. northerly one hundred and four (104) feet to place of beginning, being a portion of block six, (6,) commonly known as the Treat tract.

That defendant Patrick Collins is the owner and is seized in fee and is in possession of that certain lot of land being in the city and county of San Francisco and State of California, bounded as
111 follows, to wit:

Commencing at a point on the westerly line Capp street, distant southerly one hundred and ninety-five feet from the southwest corner of Capp and Park streets; running thence southerly along said westerly line of Capp street sixty-five feet; thence at right angles westerly one hundred and fifteen feet to a small alley-way, fifteen feet wide; thence at right angles along the easterly line of said alley-way sixty-five feet; thence at right angles easterly one hundred and fifteen feet to the said westerly line of Capp street and the point of commencement.

That defendant Michael Connell is the owner and is seized in fee and is in possession of that certain lot of land being in the city and county of San Francisco and State of California, bounded as follows:

Commencing at a point on the easterly line of Harrison st., distant southerly one hundred and eighty-two (182) feet from the southerly corner of said Harrison st. and Park (or 24th) street; thence running southerly along said line of Harrison street twenty-six (26) feet; thence at right angles easterly, and parallel with Park street, one hundred (100) feet; thence at right angles northerly, parallel with Harrison st., twenty-six feet; and thence at right angles westerly one hundred (100) feet, to the point of commencement.

112 That defendant John Shea is the owner and is seized in fee and is in possession of that certain lot of land being in the city and county of San Francisco and State of California, and bounded as follows, to wit:

Commencing at a point on the west line of Bryant street, distant north one hundred and eight feet from 24th street; thence north upon said line of Bryant street fifty-two feet; thence at right angles to Bryant street westerly one hundred feet; thence at right angles southerly fifty-two feet; and thence at right angles to the point of commencement one hundred feet.

Also, that lot of land in the city and county of San Francisco commencing on the west line of Bryant street north from 24th street one hundred and thirty feet; thence northerly along said line of Bryant street ninety-six feet; thence at right angles westerly one hundred feet; thence at right angles southerly twenty-six feet; thence at right angles to the place of commencement, one hundred feet.

That defendant W. A. Cory is the owner and is seized in fee and is in possession of that certain lot of land being in the city and county of San Francisco and State of California, bounded as follows, to wit:

Commencing at a point on the north side of Park or 24th street, distant fifty (50) feet from the northwesterly corner of Bryant and
113 Park streets; thence running along said line of Park street fifty feet; thence at right angles northerly one hundred and four feet; thence at right angles easterly, parallel with Park street, fifty feet; thence at right angles southerly one hundred and four feet, to the place

of commencement, being a portion of block No. 7, and of the Treat tract.

That defendant Andrew McManus is the owner and is seized in fee and is in possession of that certain lot of land being in the city and county of San Francisco and State of California, bounded as follows, to wit:

Commencing at a point on the west side of York street, distant one hundred and four feet southerly from Horner or 23d st., and running thence southerly along said westerly line of York street twenty-six feet; thence at right angles westerly one hundred feet; thence at right angles northerly twenty-six feet; thence at right angles easterly one hundred feet, to the point of commencement.

That the defendant Thomas Connell is the owner and is seized in fee and is in possession of that certain lot of land being in the city and county of San Francisco and State of California, bounded and described as follows, to wit:

Commencing on the southerly line of 23d street, distant fifty feet west of Hampshire street; thence running west twenty-five feet
114 along said southerly line of 23d street; thence at right angles southerly one hundred and four feet; thence at right angles easterly twenty-five feet; thence at right angles northerly one hundred and four feet, to the point of commencement.

That defendant Patrick Haynes is the owner and is seized in fee and is in possession of that certain lot of land being in the city and county of San Francisco and State of California, and bounded and described as follows:

Commencing at the point of intersection of the southerly line of 23d street (late Horner st.) and the westerly line of Alabama street; thence running westerly along said southerly line of Twenty-third street fifty feet; thence at right angles southerly, parallel with Alabama, one hundred and four feet; thence at right angles easterly, and parallel with Twenty-third street, fifty feet to the westerly line of Alabama st.; thence at right angles northerly along said westerly line of Alabama street one hundred and four feet to the southerly line of 23d street, (late Horner street,) to the point of commencement.

That defendant Luke Hackett is the owner and is seized in fee and is in possession of that certain lot of land being in the city and county of San Francisco and State of California, bounded as follows, to wit:

Commencing at a point on the easterly line of Columbia street;
115 distant one hundred and fifty-six (156) feet northerly from the northeast corner of 25th or Temple street and Columbia street; running thence northerly along the easterly line of Columbia street (26) twenty-six feet; thence at right angles southerly (26) twenty-six feet; and thence at right angles westerly (100) one hundred feet, to the place of beginning.

That defendant Timothy Shelly is the owner and is seized in fee and is in possession of that certain lot of land being in the city and county of San Francisco and State of California, bounded as follows, to wit:

Commencing on the west side of Potrero avenue, forty-five feet northerly from the northwesterly corner of 23d or Horner streets; thence running northerly twenty-five feet; thence running westerly one hundred feet; thence running southerly twenty-five feet; thence running easterly one hundred feet, to point of commencement.

That defendant Peter Blake is the owner and is seized in fee of that certain lot of land being in the city and county of San Francisco and State of California, bounded as follows, to wit:

Commencing at a point upon the south line of Horner street, fifty feet west from Alabama street; thence west thirty-seven feet six
116 inches; thence south to the south line of Perkins tract; thence north 78° E. to land assessed to John McBride; thence north on said line to the place of beginning.

Also, that lot of land bounded as follows: Commencing at a point 416 feet north from Park street, and 50 feet west from Alabama street; thence west thirty-seven feet six inches, parallel with Park street; thence at right angles north to the north line of the Treat tract; thence north 78° E. to the line of the land assessed to John McBride; thence south on said line to the point of commencement.

That defendant Joseph G. McEvoy is the owner and is seized in fee and is in possession of that certain lot of land being in the city and county of San Francisco and State of California, bounded as follows, to wit:

Commencing at a point on the west line of Alabama street, 104 feet southerly from the southwest corner of Alabama and 23d or Horner streets; thence southerly along the west line of Alabama st. 26 feet; thence westerly and parallel with 23d street, one hundred feet; thence northerly, and parallel with Alabama street, twenty-six feet; thence easterly parallel with 23d street one hundred feet, to the place of beginning.

That defendant Zebulon M. Chewning is the owner and is seized in fee and is in possession of that certain lot of land, being in the
117 city and county of San Francisco and State of *of* California, bounded as follows, to wit:

Commencing on the west line of Bryant street, 604 feet south from the southwest corner of Bryan' and 23d sts.; thence south on said line of Bryant street twenty-six feet; thence at right angles west one hundred feet; thence at right angles north twenty-six feet; thence at right angles east to the place of beginning, one hundred feet.

That defendant Margaret Cooney is a femme sole, and in her own right is the owner and is seized in fee and is in the possession of that certain lot of land; being in the city and county of San Francisco and State of California, bounded and described as follows, to wit:

Commencing at a point on the easterly line of York street, distant two hundred and eight feet northerly from the northerly line of Park or 24th streets, and running thence northerly along said line of York street twenty-six (26) feet; thence at a right angle westerly one hundred (100) feet; thence at a right angle southerly, and parallel with York street, twenty-six (26) feet; thence at right angle easterly one hundred (100) feet to the point of commencement; being a portion of block six (6) of the lot commonly known as the Treat tract.

That defendant Joseph Zerse is the owner and is seized in fee and is in possession of that certain lot of land being in the city and
118 county of San Francisco and State of California, bounded as follows, to wit:

Commencing on easterly line of York st., one hundred and four feet south of 23d street; thence running south twenty-six feet along said east line of York street; thence at right angles east one hundred feet; thence at right angles north twenty-six feet; thence at right angles west one hundred feet, to the point of commencement.

That defendant J. G. Perkins is the owner and is seized in fee and is in possession of that certain lot of land being in the city and county of San Francisco and State of California, and bounded and described as follows, to wit:

Commencing at a point on the south side of Park or 24th street, fifty feet easterly from the southeast corner of Park or 24th street and Har-

rison streets; thence running easterly on said line of Park street fifty feet; thence running at right angles southerly one hundred and four feet; thence at right angles westerly fifty feet; thence at right angles northerly one hundred and four feet, to the point of commencement.

That defendant John Gross is the owner and is seized in fee and in possession of that certain lot of land being in the city and county of San Francisco and State of California, and bounded and described as follows, to wit:

119 Commencing at a point on the southerly side of Park or 24th street, distant fifty feet easterly from the intersection of said line of Park or 24th street and Alabama street; thence running easterly along said line of Park or 24th street twenty-three feet; thence at right angles southerly, parallel with Alabama street, one hundred and four feet; thence at right angles westerly, parallel with Park or 24th street, twenty-three feet; thence at right angles northerly one hundred and four feet, to the place of beginning.

That defendant Edward Cruise is the owner and is seized in fee and is in possession of that certain lot of land being in the city and county of San Francisco and State of California, bounded as follows, to wit:

Commencing at a point on the southerly line of Park or 24th st., distant eighty-five feet westerly from the southwest corner of Park and Alabama sts.; thence westerly along Park st. twenty-five feet; thence at right angles southerly one hundred and four feet; thence at right angles easterly twenty-five feet; thence at right angles northerly one hundred and four feet, to the point of commencement.

That defendant John Cunningham is the owner and is seized in fee and is in possession of that certain lot of land being in the city and county of San Francisco and State of California, bounded as follows, to wit:

120 Commencing on the easterly line of Columbia street at a point distant 156 feet northerly from the corner formed by the north line of Park street and the east line of Columbia street; thence northerly along the easterly line of Columbia street seventy-eight feet; thence easterly one hundred feet; thence southerly seventy-eight feet; thence westerly one hundred feet, to the point of commencement.

That defendant Peter Shenkel is the owner and is seized in fee and is in possession of that certain lot of land being in the city and county of San Francisco and State of California, and bounded as follows, to wit:

Commencing at a point on the northerly line of Park or 24th street, distant easterly one hundred and ten feet from the northeasterly corner of Folsom and Park street; thence easterly along Park st. seventy-five feet; thence at right angles northerly one hundred feet; thence at right angles westerly one hundred feet, to the place of beginning.

That defendant Thomas McGuire is the owner and is seized in fee and is in possession of that certain lot of land in the city and county of San Francisco and State of California, bounded as follows, to wit:

Commencing on the west line of Potrero avenue distant two hundred and fifty feet southerly from the southerly line of 22nd street; thence running southerly along said westerly line of Potrero avenue

121 twenty-five feet; thence at right angles westerly one hundred feet; thence at right angles northerly twenty-five feet; thence at right angles easterly one hundred feet, to the point of commencement.

That defendant Peter O'Brien is the owner and is seized in fee and

is in possession of that certain lot of land being in the city and county of San Francisco and State of California, bounded as follows:

Commencing at a point on the westerly line of Alabama street, distant one hundred and thirty (130) feet southerly from the southwesterly corner of Alabama and Twenty-third or Horner street; thence running southerly along the westerly line of Alabama street (26) feet; thence at right angles westerly, and parallel with Twenty-third st. one hundred (100) feet; thence at right angles northerly, and parallel with Alabama st., twenty-six (26) feet; thence at right angles easterly, and parallel with 23d st., one hundred (100) feet, to the point of commencement.

That defendant Joseph Sullivan is the owner and is seized in fee and is in possession of that certain lot of land being in the city and county of San Francisco and State of California, bounded as follows, to wit:

Commencing at a point on the westerly line of Alabama st., distant one hundred and eighty-two (182) feet northerly from the north-
122 westerly corner of Alabama and 24th or Park sts., and running thence northerly along the said westerly line of Alabama street thirty-nine (39) feet; thence at right angles westerly, and parallel with 24th or Park st., one hundred (100) feet; thence at right angles southerly, parallel with Alabama st., thirty-nine (39) feet; thence at right angles westerly, parallel with 24th st., one hundred (100) feet, to point of commencement.

That defendant Michael Long is the owner and is seized in fee and in possession of that certain lot of land being in the city and county of San Francisco and State of California, bounded and described as follows:

Commencing on the east line of York st., 250 feet from 22nd or John st.; thence east 100 feet; thence south twenty-five feet; thence west one hundred feet; thence north twenty-five feet, to the place of commencement, being the Mission block 148.

That defendant William Doyle is the owner and is seized in fee and is in possession of that certain lot of land being in the city and county of San Francisco and State of California, bounded as follows, to wit:

Commencing on the east line of York street, 225 feet from 22nd or John street; thence east one hundred feet; thence south twenty-five feet; thence west one hundred feet; thence north twenty-five feet, to the point of commencement, being in Mission block 148.

123 That defendant Michael Tiernan is the owner and is seized in fee and is in possession of that certain lot of land being in the city and county of San Francisco and State of California, bounded as follows, to wit:

Commencing at a point on the east side of Columbia street, distant one hundred and thirty-four feet from the southerly line of 23d st.; thence southerly along said line of Columbia st. twenty-six feet; thence at right angles northerly twenty-six feet; thence at right angles westerly eighty feet, to the point of commencement.

That defendant George Moore is the owner and is seized in fee and is in possession of that certain lot of land being in the city and county of San Francisco and State of California, bounded as follows, to wit:

Commencing at a point on the easterly line of Bryant street, distant northerly one hundred and four (104) feet from the northeasterly corner of Bryant and Temple or 25th street; thence running northerly along said line of Bryant st. fifty-two (52) feet; thence at a right angle easterly, parallel with Temple or 25th st., one hundred (100) feet; thence at a right angle southerly, parallel with Bryant street, fifty-two (52) feet; thence at a right angle westerly one hundred (100) feet to the place of

beginning, being a portion of block twenty-three (23) of the Treat tract

124 That defendant I. G. Holmes is the owner and is seized in fee and is in possession of that certain lot of land being in the city and county of San Francisco and State of California, bounded as follows, to wit:

Commencing on the southerly line of 23d street, fifty (50) feet east from the east side of York street; running thence easterly twenty-five (25) feet along said line of 23d street; thence at right angles southerly one hundred and four (104) feet; thence at right angles westerly twenty-five (25) feet; thence at right angles northerly one hundred and four (104) feet, to the point of commencement.

That defendant Thomas Morton is the owner and is seized in fee and is in possession of that certain lot of land being in the city and county of San Francisco and State of California, bounded as follows, to wit:

Commencing at a point, to wit, the northwest corner of Park or 24th st. and York st., and running thence westerly along the north line of Park or 24th street (50) feet; thence at right angles northerly one hundred and four feet; thence at right angles easterly fifty feet to the westerly line of York street; thence at a right angle southerly on the said line of York st. one hundred and four feet, to the point of commencement.

125 That defendant Patrick McCabe is the owner and is seized in fee and is in possession of that certain lot of land being in the city and county of San Francisco and State of California, bounded as follows, to wit:

Commencing at a point on the westerly line of York street, one hundred and eighty-two feet south from 24th street; thence southerly along York street twenty-six feet; thence westerly at right angles one hundred feet; thence northerly at right angles twenty-six feet; thence easterly one hundred feet, to the point of commencement, being in block one hundred and seventy-five.

That defendant Con. Sullivan is the owner and is seized in fee and is in possession of that certain lot of land being in the city and county of San Francisco and State of California, bounded as follows, to wit:

Commencing on the easterly line of Harrison street at a point distant one hundred and fifty-six feet southerly from the southeasterly corner of Harrison and 24th streets; thence running southerly along said line of Harrison street twenty-six (26) feet: thence at right angles easterly one hundred (100) feet; thence at right angles northerly twenty-six (26) feet; thence at right angles one hundred (100) feet, to said line of Harrison street, the point of beginning.

126 That defendant Mary McMahon is a femme sole, and in her own right is the owner and is seized in fee and is in the possession of that certain lot of land being in the city and county of San Francisco and State of California, bounded as follows, to wit:

Commencing on the west line of Bryant street, distant one hundred and eighty-two (182) feet north of the northwest corner of Bryant and 24th streets; running thence northerly along said line of Bryant street twenty-six (26) feet; thence at right angles westerly one hundred (100) feet; thence at right angles southerly twenty-six feet; thence at right angles easterly one hundred (100) ft., the point of beginning.

That defendant Robert Hill is the owner and is seized in fee and is in possession of that certain lot of land being in the city and county of San Francisco and State of California, bounded as follows, to wit:

Commencing at the southeasterly corner of Park or 24th and Alabama streets; running thence easterly on said line of Park or 24th street fifty

feet; thence at right angles southerly one hundred and four feet; thence at a right angle westerly fifty feet; thence at a right angle northerly on said line of Alabama street one hundred and four feet, to the place of beginning.

And also the following-described lot of land, also situate in said city, commencing at a point on the easterly line of Harrison st. distant
127 southerly one hundred and four feet from the southeasterly corner of Park and Harrison streets; thence running along said line of Harrison street southerly fifty-two feet; thence at right angles easterly one hundred feet; thence at right angles northerly fifty-two feet; thence at right angles westerly one hundred feet, to point of commencement.

And these defendants, for further answer, severally aver that since the execution and delivery of said conveyance by said Broderick, in his life-time, neither said Broderick nor his successors, administrators, or executors have had any right, title, or interest in or to said tracts of land last above described, or either of them, or any part of them, or either of them.

And defendants severally say that the complainants, nor any of them, nor any of their executors, grantees, or predecessors, were not seized or possessed of the above-described premises within five years before said complainants' said bill of complaint herein was filed.

And defendants further severally aver and say that they, and each of them, and their grantors, and each of them, under whom each of them claim said last above-described premises, and every portion therein and thereof, entered into the possession of the same, and every part thereof, founding said claim upon the said conveyance executed by said Broderick in his life-time, and certain mesne conveyances by his grantees
128 and their successors, and *and* that there has been a continued occupation and possession of said premises under said conveyance and mesne conveyances, by these defendants, and each and every of them, and their grantors, and each of them, for a period of more than five years next immediately before the filing of complainants' bill of complaint herein.

And these defendants, severally deny all manner of unlawful combination and confederacy, wherewith they, or any of them, are by the complaint herein charged, except that there is any other matter, cause, or thing in said complaint contained material or neces ary for these defendants, or any of them, to make answer thereto, and not herein well and sufficiently answered, confessed, traversed, and avoided or denied, and as to such matters they deny that it is true to the best belief and knowledge of these defendants, and every of them.

And these defendants, further severally answering, say that the above severally described tracts of land, designated as owned and possessed by these defendants, severally, are within the corporate limits of the city and county of San Francisco, above ordinary high-water mark of the Pacific Ocean and of the bay of San Francisco, California, as the same existed on the 7th of July, 1846, and without the corporate limits as defined by the act of the legislature of California, passed on the 15th of April, 1851, being an act to re-incorporate the city of San Francisco, California, and not reserved to the U. S. And these defendants,
129 and each and every of them, have complied in all respects with all the provisions of an order of the board of supervisors of said city and county, entitled Order No. 800, being an order for the settlement and quieting of titles to land in the said city and county, and subsequently duly ratified and confirmed by an act of the legislature of California, ap-

proved March 27th, 1860, and said city and county, after the passage of said act, and before complainants filed their complaint herein, duly relinquished, granted, and conveyed to the defendants, and every of them, all the right, title, claim, and possession which it had or might have thereafter, or might acquire thereafter, in and to the lots and parcels of land last above described, severally, by these defendants, and every portion thereof, which lots of land these defendants, and each of them, severally occupied and possessed at the time of the filing of said bill of complaint herein, and these defendants still hold and own all the right, title, and claim which said city, at the date of said order 800, had in and to said parcels of land and every portion thereof.

And these defendants, further answering, say that as to the charges in the bill of complaint herein to which specific answers are required, and numbered from one to eight successively, and as to all that matter in the said bill touching the alleged forgery and simulation of the will of said Broderick, and touching the relations of said Broderick thereto, and the alleged act and acts of said Butler, and said McGlynn, and said Flanagan, and said *said* Phillips, and the
130 intents, purposes, and results of the acts of any of them, that these defendants severally or jointly have not been informed, save by said bill of complaint, and do not know, and in their conscience do not have belief touching the same, except that they believe all such charges and allegations referred to, and charging said acts of forgery and simulation, to be true, and do so alledge, and therefore deny all such charges, allegations, and pleas, and such further information and belief as these defendants herein is, and they alledge that said will of Broderick, as set forth by plaintiffs, was duly and legally executed by said Broderick as therein purporting, and was duly proved and admitted to probate in the probate court of the city and county of San Francisco, on the 8th day of October, 1860, after due and legal notice and due and legal and full necessary steps theretofore taken, and that the same has never been appealed from, reversed, changed, altered, or departed from, and still stands, and now is, the judgment of said court, and that said Butler and McGlynn, named in said will as executors, did duly qualify and act as such, and did sell the whole of said estate of said Broderick, real, personal, and mixed, by virtue of due and lawful orders of said probate court.

Wherefore these def'ts, and each of them, humbly pray to be hence dismissed with reasonable costs herein sustained, and that plaintiffs take no judgment herein against them.

131 ROB'T AUG. THOMPSON,
Sol'r for Defendants above named.

J. A. WOODSON,
Attorney for Def'ts above named.

SAN FRANCISCO, *October* 13, 1870.

Stipulation.

SAN FRANCISCO, *Oct.* 13, 1870.

Stipulations having heretofore been made touching time to the defendants within named to answer, and extending said time to October 15th, 1870, and no others being herein named, which were inadvertently omitted in said first stipulation, and perhaps one or other more also:

Now it is stipulated and entered that the answer of the defendants above named, and herein answering, shall be filed as if in full time, and

the verification of said answer is waived, not waiving, however, any right to reply thereto.

W'M W. CHIPMAN,
Sol'r for Complainants, 17 *Exchange Buildings.*

132 (Endorsed:)

Service accepted by copy this 13th October, 1870.

W'M W. CHIPMAN,
Sol'r for Pl't's.

Filed October 13th, 1870. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep. cl'k.

133 *Dismissed as to G. Y. Loring.*

In United States court for the district of California.

JOHN KIELEY ET AL.
against
JOHN A. McGLYNN ET AL. } In equity.

This cause is hereby discontinued as to George Y. Loring and that certain lot, 22½ feet front on Sacramento street by 100 feet in depth, being a part of 50 vara lot No. 1222, in the south E. corner thereof, and this is to authorize a judgment of dismissal to be entered herein, in accordance herewith, if desired by defendant Loring.

W'M W. CHIPMAN,
Sol'r for Complainants.

(Endorsed:) Filed 18 October, 1870. L. S. B. Sawyer, clerk.

134 *Dismissall as to C. Churchill.*

In the circuit court of the United States for the district of California.

JOHN KIELEY ET ALS.
vs.
JOHN A. McGLYNN, CLARK CHURCHILL, et als. } In equity.

This suit is hereby discontinued and dismissed as to defendant Clark Churchill, and the following-described property, to wit: commencing at a point on the east side of Folsom street, one hundred and twenty-six feet north from the intersection of the east side of Folsom street with the north line of Horner or 24th street, and running thence northerly along east line of Folsom street one hundred and four (104) feet; thence at right angles easterly, and parallel with Twenty-fourth street, two hundred and forty-five (245) feet to the west line of Treat avenue; thence south along the line of Treat avenue one hundred and four (104) feet; thence at right angles west, and parallel with Twenty-fourth street, two hundred and forty-five (245) feet to the place of beginning, said tract of land being situate in the city and county of San Francisco, State of California, and being part of the tract of land described in the plaintiffs' or complainants' bill of complaint herein, as the "Pioneer race-course tract;" and the clerk of the court is hereby authorized to enter a judg-

135 ment of dismissal as to the said defendant, and the parcel of land above described as claimed and possessed by him.

W'M W. CHIPMAN,
Sol'r for Complainants.

OCTOBER 25TH, 1870.

(Endorsed:) Filed October 25, 1870. L. S. B. Sawyer, clerk, by J. F. O'Beirne, d. c.

136 *Demurrer of G. Hudson.*

In the circuit court of the United States, ninth circuit, district of California.

JOHN KIELEY ET ALS.
vs.
JOHN A. MCGLYNN ET ALS. } In equity.

The demurrer of George Hudson, one of the defendants to the bill of complaint of the above-named complainants.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true, in such manner and form as the same are therein and thereby set forth and alleged, doth demur in law to the said bill, and for cause of demurrer showeth that the said complainants have not by their said bill made such a case as entitles them in a court of equity to any discovery or relief from or against the defendant touching the matters contained in the said bill or any of such matters, and that any discovery which can be made by this defendant touching the matters complained of in said bill or any of them cannot be of any avail to the said complainants for any of the purposes for which a discovery is sought against this defendant by the said bill, nor entitle the *the* said complainants to any relief in this court touching any of the matters therein complained of.

And the said defendant, George Hudson, showeth, as a further
137 cause of demurrer to the said complainants' bill of complaint herein, that it appears on the face of the said bill of complaint that this s'd court has no jurisdiction of the said cause in the said complaint set forth, or of the subject-matter thereof.

Wherefore, and for divers other good causes of demurrer appearing in the said bill of complaint, this defendant doth demur to the said bill and to all the matters and things therein contained, and prays the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill, and humbly prays to be hence dismissed with his reasonable costs in this behalf sustained.

GEORGE HUDSON, *in pro. per.*

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

CLARK CHURCHILL,
Of Counsel for said Def't Geo. Hudson.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

George Hudson, being first duly sworn, deposes and says that he is

the defendant named in the foregoing demurrer, and that the same is not interposed for delay.

GEO. HUDSON.

Subscribed and sworn to before me this 29th day of October, A. D. 1870.

HENRY J. TIBBEY, *Not. Pub.*

138 Subscribed and sworn to before me this 29 day of October, A. D. 1870.

J. F. O'BEIRNE,
U. S. Commissioner.

(Endorsed :)
Service of within admitted this 29th day of October, 1870.
W'M W. CHIPMAN,
Sol'r for Complainants.

Filed October 29th, 1870. L. S. B. Sawyer, clerk, by J. F. O'Beirne, d. c.

139 *Demurrer of Maguire and Cordes.*

UNITED STATES OF AMERICA :

Circuit court of the United States, ninth circuit, district of California.

JOHN KIELEY ET AL.
v.
JOHN A. MCGLYNN ET AL. } In equity.

Now come the above-named defendants, Thomas G. McGuire and C. H. Cordes, and demur to the complaint of the complainants herein, and for ground of demurrer allege—

That said complaint does not state facts sufficient to constitute a cause of action.

Wherefore said defendants pray to be hence dismissed with their costs of suit.

SHARP AND LLOYD,
Attorneys for said Def'ts.

(Endorsed :) Filed 31st October, 1870. L. S. B. Sawyer, clerk.

140 *Replication to answer of Thereasa Dirks, of Orr, et al.*

In the U. States circuit court for the district of California, ninth circuit.

JOHN KIELEY, ET AL.
vs.
JOHN A. MCGLYNN ET AL. } In equity.

The replication of the complainants to the answer of James Orr, Theresa Dirks, and others, defendants named in the answer of R. Aug. Thompson, sol'r, and J. A. Woodson, attorney, filed in their behalf herein on the 13th day of October, 1870.

These defendants, saving and reserving to themselves now, and at all times hereafter, all and all manner of benefit and advantage of excep-

tion which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say that they will aver, maintain, and prove their bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said def'ts is uncertain, untrue, and insufficient to be replied unto by these repliants, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver, main-
141 tain, and prove as this honorable court shall direct, and humbly pray as in and by said bill they have already prayed.

W'M W. CHIPMAN,
Sol'r for Complainants.

(Endorsed:)
Service of within admitted 7, 1870.
THOMPSON AND WOODSON,
Sol'r' and Attorney' for the Defendants in the Answer of Orr et als.

Filed November 9th, 1870. L. S. B. Sawyer, clerk, by J. F. O'Beirne, d. c.

142 *Answer of E. B. Kingsley et al.*

Circuit court of the United States, ninth circuit, district of California.

JOHN KIELEY ET AL.
vs.
JOHN A. MCGLYNN ET AL. } In equity.

The demurrer of E. B. Kingsley, Charles Kellett, Cormack McManns, Michael McDonald, N. A. Davis, James T. Hoyt, N. C. Parish, John B. Goldstein, John B. Brophy, Thomas Cummings, W'm T. Muller, John McGreavy, Charles Smith, John Searry, William Dick, Constantine Muller, Edward A. Hogan, Elijah Presby, George N. Murray, G. S. Kettridge, John Coulin, W'm H. Sears, David Russell, Andrew Russell, Thomas Byrne, James Clinton, Mary A. Winall, Edward McSweeny, H. M. Newhall, Dennis B. Murphy, Sarah A. D. McKer, Joseph G. Kettridge, Mary J. Gerberding, Thomas Ryan, John L. Durkee, Rose W. Coon, Mary Kelly, Daniel McCarthy, Daniel T. Winslow, David Williams, Thomas Williams, Jacob Rauch, and Henry Feige, to the bill of complaint of the above-named complainants.

These defendants, by protestation not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true in manner and form as the same are therein and there-
143 by set forth and alleged, do demur in law to the said bill, and for cause of demurrer show that the said complainants have not by their said bill made such a cause as entitles them or either of them to any discovery or relief herein *or* against these defendants or either of them, touching the matters contained in the said bill, or any of such matters, and because this court had no jurisdiction of the subject of the action set forth in the complainants' complaint.

Wherefore, and for divers other good reasons of demurrer appearing in the said bill of complaint, these defendants do demur to the said

bill and to all the matters and things therein contained, and pray the judgment of this honorable court whether they shall be compelled to make any further or other answer to the said bill, and they hereby pray to be hence dismissed with their reasonable costs in this behalf expended.

HOYT AND SEARS,
Sol'rs for the above-named Defendants.

I hereby certify that in my opinion the foregoing demurrer is well founded on point of law.

JAMES T. HOYT,
Counsel for the above-named Defendants.

(Endorsed:)

Service of a copy of this demurrer admitted this 30th day of Dec., 1870, and the aff'ts of def'ts, required by rule 31 of the practice of the courts of equity of the U. S., is hereby waived.

W'M W. CHIPMAN, *Sol for Compl'ts.*

(Endorsed:) Filed Dec'r. 31, 1870. L. S. B. Sawyer, clerk, by F. O'Beirne, d. c.

144 *Demurrer of W'm Gassert.*

Circuit court of the United States, ninth circuit, district of California.

JOHN KIELEY ET AL.
v.
JOHN A. MCGLYNN ET AL. } In equity.

The demurrer of W'm Gassert to the bill of complaint of the above-named defendants.

This defendant, not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true, in manner and form as the same are therein and thereby set forth and alleged, do demur in law to the said bill, and for cause of demurrer show that the said complainants have not by their said bill made such a cause as entitles them or either of them to any discovery or relief herein *or* against this defendant, touching the matters contained in the said bill, or any of such matters.

And because this court has no jurisdiction of the subject-matter of the plaintiffs' complaint.

Wherefore, and for divers other good reasons of demurrer appearing in the said bill of complaint, this defendant does demur to the said bill, and to all the matters and things therein contained, and prays
145 the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill, and he prays to be hence dismissed with his reasonable costs in this behalf expended.

HOYT AND SEARS,
Sol'rs for the Defendant William Gassert.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

JA'S T. HOYT,
Counsel for W'm Gassert, Defendant.

(Endorsed :)

Service of a copy admitted this 18th day of January, 1871, and the affidavit of defendant, required by the rule 31 of the practice of the courts of equity of the United States, is hereby waived.

W'M W. CHIPMAN,
Sol'r for Complainants.

Filed 18 January, 1871. L. S. B. Sawyer, clerk.

146 *Demurrer of Jno. Wool et al.*

In the circuit court of the United States for the district of California.

JOHN KIELEY ET AL., PLAINTIFFS,
vs.
JOHN A. MCGLYNN ET AL., DEFENDANTS. } In equity.

The joint and several demurrer of John Wool, Isaac Lankershim, Reuben Morton, John Murphy, Ann Purcell, Thomas Palmer, Jno. Higgins, Phillip Cullen, Patrick Linehan, Thomas H. McManus, Isaac Aaron, Mary Moynihan, Patrick Hoy, T. Fagan, Jeremiah Regan, (sued as Jonathan Regan,) Henry Casey, John Carroll, D. Hayes, E. H. Walton, Samuel Morgensteine, Adolph Kaskell, C. Hobman, W'm Bruce, George Y. Loring, A. B. Richardson, P. T. Brady, Bridget Levy, Charles S. Moulton, Robert Grier, E. A. Litchfield, W'm K. Dietrich, James J. Gardner, A. J. Douzell, Patrick Troy, John Wigmore, O. H. Keyes, Benjamin Smith, Charles Meyer, David D. Colton, James Creamer, Michael Reilly, A. C. Wass, Alfred W. Manning, John H. Morehouse, D. Bloom, F. X. Siber, (sued as X. F. Scheir,) Edward Kennedy, James Bucher, H. Ferguson, Harry Hilgoth, W. A. Grover, J. Reardon, (sued as J. Riordan,) Robert Hazard, J. R. Mogan, (sued
147 as J. Mogan,) Caroline Jones, A. M. Gendar, Edward Megrath, B. F. Ames, John H. Kelly, James Lang, Jeremiah Maloney, Ann French, Ann Duffy, Samuel Crim, John Center, C. D. Hoyt, S. S. Sprague, Thomas McDonough, Louis Zeh, Edward Barry, H. D. Lathrop, W. R. York, W'm Sutten, (sued as W. Sutten,) Mary McLaughlin, (sued as M. McLaughlin,) Robert White, Omnibus Railroad Company, Francis Bellisle, Jacob Price, S. A. Winall, B. Miller, (sued as J. B. Miller,) Joseph Boardman, J. Levy, Julius Morris, Helena Dietterle, Norah S. Arnold, Anna E. Smith, Augustus Roberts, Henry Arrison, C. M. Hitchcock, H. Leonard, C. W. Wingard, Thomas Wyatt, Stephen W. Dick, O. F. Griffin, W. H. Greaves, E. R. Harris, A. W. Stone, Samuel, Weilheimer, Antoine Borel, L. H. Bonestell, Harvey Hall, W'm E. Domett, Louis Soher, A. Wynne, W. K. Vanderslice, Asa Harker, John Kern, H. L. Davis, Charles H. Brown, H. C. Buster, John F. Cline, J. M. Feige, Alexander Hoy, James Heron, James Hillman, (appeared as Hillman,) John M. Brown, (appeared as Brown,) John G. Klumpke, H. Leavy, Mary Levine, John O'Connor, J. H. Quinn, W'm Otis Reynolds, M. R. Roberts, F. Joost, M. Scheper, (sued and appeared as Scheper,) Rebecca Spaulding, R. Garrett, Thomas Russell, W'm Kock, John Calahan, Hermann Bruns, J. F. Johnson, George S. Crine, W. C. Ralston, Edward Barry, The San Francisco and San José Railroad Company, S. M. Wilson, H. M. Norton, John Manton, (sued as Herbert
148 Roe,) and John Wooll, executor of the estate of David Jones,

deceased, defendants to the bill of complaint of the above-named complainants.

The said defendants, by protestation not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true in such manner and form as the same are therein and thereby set forth & alleged, doth demur in law to the said bill, and for cause of demurrer showeth that the said complainants have not by their said bill made such a case as entitles them to any discovery or relief from or against these defendants, or any or either of them, touching the matters contained in the said bill, or any of such matters; and for special causes of demurrer the defendants aver:

First. That this honorable court has no jurisdiction of the matters and things set forth in the complaint, the same not being cognizable in equity.

Second. That the sole and exclusive jurisdiction of the matters and things set forth in the bill of complaint of the plaintiffs is vested in the probate court of the city and county of San Francisco, of the State of California.

Third. That this honorable court has no jurisdiction of the matters and things set forth in the complaint, the said jurisdiction being exclusively vested in the districts courts of the State of California.

Fourth. That in and by virtue of the statute of the State of Cal-
149 ifornia, the said probate of said will of David C. Broderick, deceased, is final and conclusive, the same not having been contested within one year after said probate.

Fifth. That this action was not commenced within three years next after the said sales, by the executor of said Broderick, deceased, of the property described in the complaint.

Sixth. That the cause of action set forth in the complaint did not, nor did either of them, accrue within four years next before the commencement of this action.

Seventh. That the causes of action set forth in the complaint did not, nor did either of them, accrue within three years next before the commencement of this action.

Eighth. That the causes of action set forth in the complaint did not, nor did either of them, accrue within five years next before the commencement of this action.

Ninth. The said cause of action set forth in the complaint is stale and antiquated, and no sufficient reason is assigned for the long delay in commencing said action.

Tenth. The said sale by said executor was made under a valid order and decree of the said probate court, and the defendants became purchasers whilst the same was in full force and effect.

Eleventh. That the said bill of complaint does not state facts
150 sufficient to constitute a cause of action against these defendants or any of them.

Wherefore these defendants respectively demand the judgment of this honorable court whether they shall be compelled to make any further or other answer to the said bill of complaint, or of any of the matters and things therein contained, and pray to be hence dismissed with their reasonable costs in this behalf expended.

And these defendants respectively, by protestation, not confessing or acknowledging all or any of the matters and things in the complainants' bill to be true, in such manner and form as the same are therein set forth and alleged, as to so much and such parts of said bill as seeks that these defendants may answer and set forth whether said McGlynn

and Butler caused application to be made to said probate court for and obtained an order of sale of the estate of said Broderick, deceased, and whether they sold the whole of said estate, and as to whether, at the time of said sale, the matters and things set forth in said complaint in that behalf, in reference to said last will and testament of said Broderick and the probate thereof, was a matter of public or general notoriety, and whether the said defendants, and those under whom they claim, had notice thereof, and whether these defendants claim said lands, or any of them, under said probate sales, and conveyances by virtue thereof,
151 and prays that these defendants may answer the same, and that prays that these defts, as purchasers at said probate sale, or claimants under said purchasers, stand charged as trustees of said complainants, and that they be compelled to convey to said complainants all interest and title acquired in said estate, and that an account of said probate sale be taken, do demur, and for causes of demurrer show—

First. That said complainants have not in said parts of said bill made or stated such a case as doth or ought to entitle them, or any of them, to any discovery or relief as is thereby sought and prayed for from or against these defendants or either of them.

Second. That as to said parts of said complaint, this honorable court has no jurisdiction, the same being exclusively cognizable in the probate court of the city and county of San Francisco, and in the supreme court of the State of California on appeal.

Third. That this honorable court, as to said parts of said complaint, has no jurisdiction of the subject-matter.

Fourth. That said bill of complaint, as to said parts, and all relief in respect thereto, is barred by the statute of the State of California in such case made and provided, because said action was not commenced within three years next after said sale.

Fifth. That said cause of action, as to said parts of said com-
152 plaint, did not accrue within three years next before the commencement of this action.

Sixth. That said cause of action, as to said parts of said complaint, did not accrue within four years next before the commencement of this action.

Seventh. That said cause of action, as to said parts of said complaint, did not accrue within five years next before the commencement of this action.

Eighth. That this action was not commenced within three years next after the said cause of action first accrued as to said parts of said complaint.

And therefore, and for other good causes of demurrer in the said bill contained, or to so much of the said complain'ts' bill as is demurred thereto as aforesaid, these defendants do demand the judgment of this honorable court whether they shall be compelled to make any answer to such part of the said bill as is so demurred unto as aforesaid, and pray to be hence dismissed with their reasonable costs in this behalf expended.

S. M. WILSON,
Solicitor for said Defendants.

153 Circuit court of the United States, district of California. In equity.

JOHN KIELEY ET AL., COMPLAINANTS,
vs.
JOHN A. MCGLYNN ET AL., DEFENDANTS.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

David D. Colton, being of lawful age, and duly sworn on his own behalf, as well as on behalf of the other defendants named in the annexed and foregoing demurrer, deposes and says that he is one of the defendants named in said bill of complaint and demurrer, and knows of the points and questions involved in said action, and that demurrer is not interposed for delay.

DAVID D. COLTON.

Subscribed and sworn to this 27th day of January, 1871, before me.
L. S. B. SAWYER,
U. S. Com'r Cir. C't, &c.

154 I, Samuel M. Wilson, solicitor for the defendants named in the within and foregoing demurrer, do hereby certify that in my opinion the same is well founded in point of law.
San Francisco, January 27th, 1871. S. M. WILSON,
Sol'r for Defendants demurring.

(Endorsed:) Filed 27th January, 1871. L. S. B. Sawyer, clerk.

155 *Demurrer of J. A. McGlynn.*

In the circuit court of the United States for the district of California.

JOHN KIELEY ET AL., PLAINTIFFS,
vs.
JOHN A. MCGLYNN ET AL., DEFENDANTS. } In equity.

The demurrer of John A. McGlynn, one of the defendants, to the bill of complaint of the above-named complainants.

The said defendant by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true in such manner and form as the same are therein and thereby set forth and alleged, doth demur in law to the said bill, and for cause of demurrer showeth that the said complainants have not by their said bill made such a case as entitles them to any discovery or relief from or against these defendants, or any or either of them, touching the matters contained in the said bill or any of such matters; and for special causes of demurrer the defendants aver—

First. That this honorable court has no jurisdiction of the matters and things set forth in the complaint, the same not being cognizable in equity.

156 Second. That the sole and exclusive jurisdiction of the matters and things set forth in the bill of complaint of the plaintiffs is

vested in the probate court of the city and county of San Francisco, of the State of California.

Third. That this honorable court has no jurisdiction of the matters and things set forth in the complaint, the said jurisdiction being exclusively vested in the district courts of the State of California.

Fourth. That in and by virtue of the statutes of the State of California, the said probate of said will of David C. Broderick, deceased, is final and conclusive, the same not having been contested within one year after said probate.

Fifth. That this action was not commenced within three years next after the said sales, by the executor of said Broderick, deceased, of the property described in the complaint.

Sixth. That the causes of action set forth in the complaint did not, nor did either of them, accrue within four years next before the commencement of this action.

Seventh. That the cause of action set forth in the complaint did not, nor did either of them, accrue within three years next before the commencement of this action.

Eighth. That the cause of action set forth in the complaint did not, nor did either of them, accrue within five years next before the commencement of this action.

157 Ninth. The said cause of action set forth in said complaint is stale and antiquated, and no sufficient reason is assigned for the long delay in commencing said action.

Tenth. The said sale by said executor was made under a valid order and decree of the said probate court, and this defendant became a purchaser whilst the same was in full force and effect.

Eleventh. That the said bill of complaint does not state facts sufficient to constitute a cause of action against this defendant.

Wherefore this defendant demands the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill of complaint, or of any of the matters and things herein contained, and prays to be hence dismissed with his reasonable costs in this behalf expended.

Circuit court of the United States for the district of California.

JOHN KIELEY ET AL., COMPLAINANTS, *vs.* JOHN A. MCGLYNN ET AL., DEFENDANTS. } In equity.

158 John A. McGlynn, of lawful age, being duly sworn, deposes and says that he is one of the defendants in the foregoing bill of complaint and the annexed demurrer, and knows the matters involved in said action, and that said demurrer is not interposed for delay.

JOHN A. McGLYNN.

Subscribed and sworn to before me this 27th day of January, 1871.

L. S. B. SAWYER,
Com'r U. S. Cir. C't, &c.

I, Samuel M. Wilson, solicitor for the with' and above-named defendant, John A. McGlynn, do hereby certify that in my opinion the said demurrer interposed by said McGlynn is well founded in point of law.

San Francisco, January 27th, 1871. S. M. WILSON,
Sol'r for Defendant John A. McGlynn.

(Endorsed:) Filed 27th January, 1871. L. S. B. Sawyer, clerk.

159 *Answer of James Hamilton.*

Circuit court of the United States, district of California. In equity.

JOHN KIELEY AND MARY KIELY, HIS WIFE, IN her right, George Wilson and Ann Wilson, his wife, in her right, and Ellen Lynch, complainants,
vs.
JOHN A. MCGLYNN AND OTHERS, DEFENDANTS.

Now comes James Hamilton, one of the defendants sued as John Doe, and for answer denies each and every allegation in plaintiffs' complaint contained, and alleges that he is the owner and possessor of certain premises in Mission lot No. 149, in San Francisco, commencing 75 feet east from York street, then east 50 feet, thence south 104 feet, thence west 50 feet, thence north 104, which are included in the tract claimed in plaintiffs' complaint.

Wherefore defendant demands judgment for his costs.

H. R. JANES & J. R. FLETCH,
Def'ts' Attorneys.

160 I, James Hamilton, on oath say that I have read the foregoing answer, and know the contents thereof; that the same is true of my own knowledge, except as to the matters therein stated on information or belief, and as to these I believe them to be true.

JAMES HAMILTON.

Subscribed and sworn to before me this 4th day of February, 1871.

JA'S F. O'BEIRNE,
Com'r U. S. Cir. C't Dist. of Cal.

(Endorsed:) Filed 4th day of February, A. D. 1871. L. S. B. Sawyer, clerk, by J. F. O'Beirne, d. c.

161 *Answer of Cha's S. Capp.*

In the circuit court of the United States, district of California.

JOHN KIELEY ET ALS., COMPLAINANTS,
vs.
JOHN A. MCGLYNN ET ALS., DEFENDANTS. } In equity.

The demurrer of Charles S. Capp, one of the defendants herein, to the bill of complaint of the above-named complainants.

This defendant by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true in matter and form as the same are therein and thereby set forth and alleged, doth demur in law to the said bill, and for cause of demurrer showeth that the said complainants have not by their said bill made such a case as entitles them, or either of them, to any discovery or relief herein from or against this defendant touching the matters contained in the said bill, or any of such matters.

And because this court has no jurisdiction of the subject-matter of the action set forth in complainants' complaint.

Wherefore, and for divers other good causes of demurrer ap-
162 pearing in the said bill of complaint, this defendant doth demur to the said bill, and to all the matters and things therein contained, and prays the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill, and he prays to be hence dismissed with his reasonable costs in this behalf sustained.

CHARLES S. CAPP,
Def't in pro. per.

STATE OF CALIFORNIA.
City and County of San Francisco, ss:

Charles S. Capp, being first duly sworn, deposes and says that he is the defendant named in the foregoing demurrer, and that the same is not interposed for delay.

CHARLES S. CAPP,
Def't in pro. per.

Subscribed and sworn to before me this 6th day of February, A. D. 1871.

J. F. O'BEIRNE,
U. S. Com'r.

I hereby certify that, in my opinion, the foregoing demurrer is well founded in point of law.

CHA'S S. CAPP,
Def't in pro. per.

(Endorsed:)

Service of a copy of this demurrer is admitted this 6th day of February, 1871.

WM W. CHIPMAN,
Sol'r for Complainants.

Filed February 6th, 1871. L. S. B. Sawyer, clerk, by J. F. O'Beirne, d. c.

163 *Dismissal Dan. Coney.*

In the circuit court of the United States, ninth circuit, district of California.

JOHN KIELEY & ALS.,
vs.
JOHN A. MCGLYNN & ALS. } In equity.

It is hereby stipulated and agreed that the above-entitled action be, and the same is hereby, dismissed as to the defendant Daniel Coney, therein impleaded with John A. McGlynn & als., defendants, and also to that portion of the land set forth in the plaintiffs' bill which is situated in San Francisco city and county, and State of California, and embraced within the following boundaries, to wit:

Commencing at a point on the southerly line of Filbert st., eighty-seven and one-half (87½) feet easterly from the southeasterly corner of Larkin and Filbert streets, and running thence easterly and along said

southerly line of Filbert street twenty-five (25) feet to a point; thence at right angles southerly, and parallel with Larkin street, eighty-two and one-half (82½) feet, to a point; thence at right angles westerly, and parallel with Filbert street, twenty-five (25) feet, to a point; and thence at right angles northerly, and parallel with Larkin street, eighty-two and one-half (82½) feet, to the southerly line of Filbert street and
164 the point of commencement, said land being a portion of fifty vara lot No. 1392, as shown on the official map of said city and county.

And the clerk of said court is hereby authorized and instructed to enter a dismissal in said cause as to said defendant Daniel Coney, and as to the land herein specified, at his costs.

Dated San Francisco, January 31, 1871.

WM W. CHIPMAN,
Sol'r for Complainants.
SAM'L L. CUTTER, JR.,
Sol'r for Defendant.

(Endorsed:) Filed 6th February, 1871. L. S. B. Sawyer, clerk.

165 *Demurrer of George & Harris.*

In the circuit court of the United States for the district of California.

JOHN KIELEY ET AL., PLAINTIFFS,
vs.
JOHN A. MC GLYNN ET AL., DEFENDANTS. } In equity.

The joint and several demurrer of Julius George and Julian B. Harris, defendants, to the bill of complaint of the above-named complainants.

The said defendants by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true in such manner and form as the same are therein and thereby set forth and alleged, do*th* demur in law to the said bill, and for cause of demurrer show*eth* that the said complainants have not by their said bill made such a case as entitles them to any discovery or relief from or against these defendants or any or either of them, touching the matters contained in the said bill, or of any of such matters; and for special cause of demurrer the defendants aver—

First. That this honorable court has no jurisdiction of the matters and things set forth in the complaint, the same not being cognizable in equity.

166 Second. That this sole and exclusive jurisdiction of the matters and things set forth in the bill of complaint of the plaintiffs is vested in the probate court of the city and county of San Francisco, of the State of California.

Third. That this honorable court has no jurisdiction of the matters and things set forth in the complaint, the said jurisdiction being exclusively vested in the district courts of the State of California.

Fourth. That in and by virtue of the statutes of the State of California the said probate of said will of David C. Broderick, deceased, is final and conclusive, the same not having been contested within one year after said probate.

Fifth. That this action was not commenced within three years next

after the said sales, by the executor of said Broderick, deceased, of the property described in the complaint.

Sixth. That the causes of action set forth in the complaint did not, nor did either of them, accrue within four years next before the commencement of this action.

Seventh. That the causes of action set forth in the complaint did not, nor did either of them, accrue within three years next before the commencement of this action.

Eighth. That the causes of action set forth in the complaint did not, nor did either of them, accrue within five years next before the commencement of this action.

167 Ninth. The said cause of action set forth in the said complaint is stale and antiquated, and no sufficient reason is assigned for the long delay in commencing said action.

Tenth. The said sale by said executors was made under a valid order and decree of the said probate court, and the defendants became purchasers whilst the same was in full force and effect.

Eleventh. That the said bill of complaint does not state facts sufficient to constitute a cause of action against these defendants or either of them.

Wherefore these defendants respectfully demand the judgment of this honorable court whether they shall be compelled to make any further or other answer to the said bill of complaint, or any of the matters and things therein contained, and pray to be hence dismissed with their reasonable costs in this behalf expended.

And these defendants respectively by protestation, not confessing or acknowledging all or any of the matters and things in the complainants' bill to be true in such manner and form as the same are therein set forth & alleged, as to so much and such parts of said bill as seeks that these defendants may answer and set forth whether said McGlynn and Butler caused application to be made to said probate court for and obtained an order of sale of the estate of said Broderick, deceased, and whether they sold the whole of said estate, and as to whether, at the time of said sale, the matters and things set forth in said complaint, in that

168 behalf, in reference to said last will and testament of said Broderick, and the probate thereof, was a matter of public and general notoriety, and whether the said defendants and those under whom they claim had notice thereof, and whether these defendants claim said lands or any of them, under said probate sale and conveyances by virtue thereof, and that prays that these defendants may answer the same, and that prays that these defendants as purchasers at said probate sale, or claimants under said purchasers, stand charged as trustees of said complainants, and that they be compelled to convey to said complainants all interest and title acquired in said estate, and that an account of said probate sale be taken, do demur, and for causes of demurrer, show—

First. That the said complainants have not in said parts of said bill made or stated such a case as doth or ought to entitle them or any of them to any discovery or relief as is thereby sought and prayed for from or against the defendants or either of them.

Second. That as to said parts of said complaint, this honorable court has no jurisdiction, the same being exclusively cognizable in the probate court of the city and county of San Francisco, and in the supreme court of the State of California on appeal.

Third. That this honorable court as to said parts of said complaint has no jurisdiction of the subject-matter.

169 Fourth. That said bill of complaint as to said parts, and all re-

lief in respect thereto, is barred by the statutes of the State of California in such case made and provided, because said action was not commenced within three years next after said sale.

Fifth. That said cause of action as to said parts of said complaint did not accrue within three years next before the commencement of this action.

Sixth. That said cause of action as to said parts of said complaint did not accrue within four years next before the commencement of this action.

Seventh. That said cause of action as to said parts of said complaint did not accrue within five years next before the commencement of this action.

Eighth. That this action was not commenced within three years next after the said cause of action first accrued as to said parts of said complaint.

And therefore, and for other good causes of demurrer in the said bill contained, as to so much of the said complainants' bill as is demurred thereto, as aforesaid, these defendants do demand the judgment of this honorable court whether they shall be compelled to make answer to such part of the said bill as is so demurred unto as aforesaid, and pray to be hence dismissed with their reasonable costs in this behalf expended.

A. H. LOUGHBOROUGH,
Sol'r for s'd Def'ts Julius George & J. B. Harris.

170 (Endorsed:) Filed 20th March, 1871. L. S. B. Sawyer, clerk.

171 *Answer of C. S. Holmes et al.*

In the circuit court of the United States, district of California.

JOHN KIELEY ET ALS., COMPLAINANTS,
vs.
JOHN MCGLYNN ET ALS, DEFENDANTS. } In equity.

Joint and several answer of Charles S. Holmes, A. Kohler, Mary A. White, R. P. Clement, and J. H. Cummings.

The defendants, now and at all times hereafter saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' bill of complaint contained, for answer thereto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, these defendants, answering, say:

That they have been informed, and believe it to be true, that on the 16th day of September, A. D. 1859, said David C. Broderick died seized of certain real and personal property situate in said State and district. But these defendants upon their information and belief say that they deny that said Broderick died intestate.

172 And these defendants, further answering, say that they do not know and have not been informed, save by the complainants' said bill, and cannot set forth as to their belief or otherwise, whether or not the said complainants, Mary Kiley, Ann Wilson, and Ellen Lynch, or any of them were, at the death of the said Broderick, his next of kin, and only heirs at *at* law, and whether or not they or any of them were related to the said Broderick, or were or are his heirs at law, and therefore

they leave the complainants to make such proof thereof as they may deem material.

And these defendants, further severally answering, say that they deny that the said David C. Broderick, at the time of his death, was seized in his demesne as of fee or otherwise of that particular part, parcel, or tract of real estate mentioned and described in said complainants' bill of complaint as a "lot of land commencing at a point on the old road from the Mission Dolores to the Pueblo de San José, at the southwesterly corner of lands formerly occupied by one A. A. Green, and about 150 yards in a southerly direction from where said Green's house (formerly known as the Pavilion) stood; running thence south along said road 600 yards to a small creek; thence along said creek and in an easterly direction about 1,600 yards to a bluff on an arm of the bay of San Francisco; thence north in a direct line across said arm to the eastern wall of lands of said mission known as the 'Potrero wall;" thence along said wall north about 700 yards to northern line fence established between said premises and lands of R. G. Perkins; and
173 thence west along said line fence in a direct line about 1,300 yards to point of beginning, being the tract of land commonly known as the "Pioneer race-course tract.'"

And these defendants, severally answering, say that on or about the 16th day of June, 1853, and during the life-time of the said David C. Broderick, he, the said David C. Broderick, for a good and sufficient consideration to him paid, conveyed by deed all his right, title, and interest and estate in and to said above-described tract of land to one George W. Wright, from whom through mesne conveyances these defendants severally deraign title to the separate and distinct parts and parcels of said land which they severally occupy.

And these defendants, further severally answering, say that since said 16th day of June, 1853, neither the said Broderick, nor his heirs, executors, or administrators, have had any right, title, or interest in or to said above-described tract of land, or to any part or portion thereof.

And these defendants, further severally answering, say that the complainants, nor any of them, nor their or any of their ancesters, predecessors, or grantors were not seized or possessed of said above-described premises within five years before said complainants' bill herein was filed.

And these defendants, further severally answering, say that they, and each of them, and their grantors, and each of their grantors, under whom they, and each of them, claim said premises, and every part
174 and portion thereof, entered into the possession of said premises and every part and portion thereof, founding said claim upon said written conveyance of said David C. Broderick, above mentioned, as being a conveyance of said premises, and that there has been a continued occupation and possession of said premises under said conveyance by these defendants, and each and every of them, and their grantors, and each and every of them, for a period of more than five years before the said bill of the said complainants herein was filed, and more than five years before the death of said David C. Broderick, and that during that entire period said premises have been protected by a substantial enclosure.

And these defendants, further severally answering, say that the said will and testament in writing of the said David C. Broderick in the said complainants' said bill of complaint mentioned and set forth, bearing date on the 2nd day of January, 1859, was, on the 20th day of February, 1860, duly presented to the probate court of the said

city and county of San Francisco, by John A. McGlynn and Andrew J. Butler, two of the executors named therein, with their petition setting forth the facts necessary to give said probate court jurisdiction thereof, and praying that said will might be admitted to probate and that letters testamentary might be issued to them; that thereupon said probate court duly appointed the 12th day of March, 1860, as the time for proving said will, and caused due notice thereof to be given by the clerk of said court, by publication in a newspaper printed
175 in said city and county; that on said last-mentioned day various persons, claiming to be heirs of said Broderick, appeared in said probate court and filed therein their objections in writing to having said will admitted to probate, on the ground that it was false, simulated, and a forgery; that the hearing of said issues was continued by said probate court from time to time until the 8th day of October, 1860, when said probate court, after due consideration, duly admitted said will to probate, and that the judgment and order of said probate court admitting said will to probate is in full force, and has never been appealed from, changed, modified, vacated, nor reversed.

And these defendants, further severally answering, say that the above-described tract of land, and every part and portion thereof, is situated on the peninsula of San Francisco and within the present corporate limits of said city and county of San Francisco, and above the natural ordinary high-water mark of the bay of San Francisco and the Pacific Ocean, as the same existed on the 7th day of July, 1846, and without the corporate limits of the city of San Francisco as defined in the act to incorporate the said city, passed by the legislature of California on the fifteenth day of April, eighteen hundred and fifty-one, and not reserved to the United States. And these defendants, and each and every of them, have complied in all respects with all the provisions of an order of the board of supervisors of the said
176 city and county of San Francisco, entitled "Order 800," an order for the settling and quieting titles to land in the city and county of San Francisco, situate above high-water mark of the bay of San Francisco and the Pacific Ocean, and without the corporate limits of the city of San Francisco, approved by the mayor and president of said board of supervisors on the fourteenth day of January, one thousand eight hundred and sixty-eight, and ratified and confirmed by an act of the legislature of the State of California, entitled "An act to confirm a certain order passed by the board of supervisors of the city and county of San Francisco, approved March 27, 1868;" and the city and county of San Francisco, after the passage of said act, and before the bill of the complainants herein was filed, duly relinquished, granted, and conveyed to these defendants, and to each and every of them, all the right, title, and claim which the said city and county then had or might thereafter acquire to said above-described tract of land, and to every part and portion thereof which these defendants, and each and every of them, held, occupied, and possessed at the time of filing said bill of complaint herein, and that these defendants still hold and own all the right, title, and claim which said city, at the date of said order "No. 800," had in and to said above-described tract of land, and to each and every part thereof, and that during all the time hereinbefore mentioned and down to the date of said relinquishment, the legal title of said premises was in the United States and said city and county.

And these defendants, further severally answering, say that they, or any or either of them, to the knowledge or belief of the others or
177 either of them, do not know and have never been informed, save

by the said complainants' bill, and do not in their consciences believe, that the said paper writing set forth and referred to in said complainants' bill, and purporting to be a last will and testament, was or is a simulated or forged instrument, or was not the last will and testament of the said David C. Broderick, or was not signed, declared, and published as such by him.

And these defendants, further severally answering, say that they, or any or either of them, to the knowledge or belief of the others, or other of them, do not know and have never been informed, save by the said complainants' bill, and do not in their consciences believe, that the said will was fabricated, or that it was written by one Alfred A. Phillips in New York or elsewhere, about the 1st day of January, 1860, or at any other time, or that the name of D. C. Broderick was signed thereto by one Moses E. Flanagan, or that the said Andrew J. Butler knew the same to be a forgery, or that he procured any witness to swear to the validity of said will, or that he by such testimony procured the admission of said will to probate and the recognition of said McGlynn and himself as executors; but these defendants, and each and every of them, have been informed and believe that the said will, set forth and referred to in said complainants' said bill, was duly proved and admitted to probate, and that the said Butler and McGlynn, named in said will as executors thereof, duly qualified and acted as such, did sell the
178 whole of said estate by virtue of orders of said probate court.

And these defendants severally deny all and manner of unlawful combination and confederacy wherewith they or any of them are by the said bill charged; without this, that there is any other matter, cause, or thing in the said complainants' said bill of complaint contained, material or necessary for these defendants, or any of them, to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, or denied, is true to the knowledge or belief of these defendants or any of them. All which matters and things these defendants, and each and every of them, are ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

R. P. AND JABISH CLEMENT,
Sol'rs for Defendants.

JABISH CLEMENT, *Counsel.*

UNITED STATES OF AMERICA,
District of California, ss:

R. P. Clement being duly sworn, does depose and say that he is one of the defendants named in the foregoing answer, that he has
179 read the same, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he verily believes it to be true.

R. P. CLEMENT.

Subscribed and sworn to before me this 27th day of June, A. D. 1871.
L. S. B. SAWYER,
U. S. Com'r.

(Endorsed:)

Service of a copy of the within answer accepted this 24th day of June, A. D. 1871, and the verification of R. P. Clement accepted as a verification by all the defendants in said answer mentioned.

WM W. CHIPMAN,
Sol'r for Complainants.

(Endorsed:) Filed June 24th, 1871. L. S. B. Sawyer, clerk, by J. F. O'Beirne, d. c.

180 *Replication of Kieley et al. to answer of C. S. Holmes et al.*

In circuit court of the United States for the northern district of California, ninth circuit.

JOHN KIELEY ET AL., COMPLAINANTS, *vs.* JOHN A. MCGLYNN ET AL. DEFENDANTS. } In equity.

The replication of John Kieley and Mary Kieley, George Wilson and Ann Wilson, and Ellen Lynch, complainants herein, to the answer of Charles S. Holmes, Mary E. White, R. P. Clement, and J. H. Cummings, certain defendants.

These repliants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficieney of the answer aforesaid,

For replication thereto, say that they will aver and prove their said bill to be true, certain, and sufficient in law to be answered unto, and that the said answer of said Holmes, White, Clement, and Cummings is uncertain, untrue, and insufficient to be replied to by these repliants, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in law to be replied unto, confessed or avoided, traversed or denied, is true.

181 All which matters and things these repliants are and will be ready to aver and prove, as this honorable court shall direct, and humbly pray as in their said bill they have already prayed.

WM W. CHIPMAN,
Sol'r for Complainants.

(Endorsed:) Filed August 1, 1871. L. S. B. Sawyer, clerk, by J. F. O'Beirne, d. c.

182 *Amendments to bill of complaint.*

In the circuit court of the United States, district of California, ninth circuit, in equity.

JOHN KIELEY ET AL., COMPLAINANTS, *vs.* JOHN A. MCGLYNN ET AL., DEFENDANTS. } No. 819. Amendments to bill of complaint.

Paragraph ending line 10, page 24, is amended as follows: After the words "evidence to prove the same," add the following:

That your oratrix, the said Ann, is the daughter of said Catharine, by her intermarriage, after the death of said Bryan Byrne, with one James Broderick, a citizen and resident of Great Britain and Ireland.

That said Ann, at the death of said David C. Broderick, was a mar-

ried woman, residing with her husband, George Wilson, in the colony of Queensland, in the eastern part of the continent of Australia, or New Holland, and that she has never, since her said marriage with the said George Wilson, resided out of or beyond the said colony, and
183 was never within the territorial limits of the State of *of* California, or of the United States, or within the jurisdiction of this court, or of any courts of the United States.

That neither your oratrix, the said Ann, nor her husband, the said George Wilson, nor the said Mary Kieley, nor her husband, at any time ever resided in the United States of America, and that the said orators have each and all of them always been subjects of Great Britain.

Your orators further represent that they did not, nor did either of them, have any knowledge or means of knowledge, notice, or information of the death of said David C. Broderick, nor of the forgery of said pretended will, nor of the presentation of the same to said probate court, nor of the petition for the probate thereof, nor of the granting of letters testamentary, nor of any of the proceedings of said probate court in the matter of the estate of the said David C. Broderick, until about eight years after the filing of said pretended will and said petition of said McGlynn and Butler, in the said probate court as aforesaid, and that only the said Ellen then heard generally, and for the first time, of the matters and things above named. And furthermore, that your orators, the said Ann Wilson and George Wilson, John Kieley and Mary Kieley, had no knowledge of any of the above-named facts or proceedings, nor had either of them, until within three years next before the filing of this their bill in this court, nor did the said Ann or
184 George Wilson have any knowledge or notice whatsoever of the same until about twelve months prior to the filing of the said bill of complaint, at which time she and her s'd husband, George Wilson, first heard of the said matters generally and indefinitely; and since the time of receiving said general information, your complainant Ann, and her said husband, did constantly make diligent and earnest endeavors as far as the illness of said George Wilson, who was enfeebled from consumption, and the pecuniary circumstances of your orators, said Ann and George, would permit, to discover the facts and truth of the matter, and the evidence to prove the same. And that your orators, the said Ann and George Wilson, during all the period named from the death of the said David C. Broderick, and even prior thereto, until the filing of this their s'd bill, constantly resided in the colony of Queensland, in the eastern part of the continent of Australia, and during all that period down to the commencement of this suit the said Ann was the wife of, and, as his wife, resided with, the said George Wilson.

Your said orators further represent unto this honorable court that they were, each and all of them, unlettered and illiterate, and the said Ann and George Wilson have always lived in comparative obscurity by reason of their humble circumstances, far removed from the great centres of civilization, population, intelligence, and information, and more than a thousand miles from the city of Sydney, from whence your said orators, Ann and George Wilson, received their first information
185 on the subject-matter hereinbefore named, and that your orators, Ellen and Mary, as well as the said Ann, were uneducated and unable, through the medium of newspapers, (being unable to read,) to acquire any knowledge, notice, or information whatever from such source concerning the said facts, or any of them, hereinbefore set forth.

That neither of your orators ever saw, or read, or heard read, any

newspaper or similar paper or publication, or notice of any kind from the said city of San Francisco containing any information or facts concerning the death of the said David C. Broderick, or the said pretended will, or any of the proceedings touching or concerning the same, as above set forth or alluded to. Nor did they, or either of them, acquire any knowledge whatsoever concerning any of the said facts or matters and things hereinbefore mentioned or referred to, or concerning the death of the said David C. Broderick, or the alleged will, or the probate proceedings thereon and thereunder, until, by accident, through a clergyman, the Rev'd W'm Taylor, who, in the city of Sydney, in the colony of New South Wales, communicated some intelligence of the same to a barrister, one Ja's Greer, who communicated the same to the said Ellen, one of your s'd orators, about the date hereinbefore mentioned, to wit, eight years after the filing of said petition by the said McGlynn in said probate court, and that thereafter, to wit, less than one year prior to the filing of this bill, the said information was first communicated, and then for the first time any information, notice, or in-
186 telligence of any sort, or in any manner whatsoever, touching or pertaining to the said probate proceedings, or the death of said David C. Broderick, or said will, or the alleged forgery thereof, was communicated to your orators, the said Ann, and her husband, the said George, or either of them, and that the same was communicated to them at their said place of residence, in the said colony of Queensland, by the said Greer.

W'M W. CHIPMAN,
Sol'r for Complainants.

M. G. COBB,
Of Counsel for Compl'ts.

AUGUST 5, 1871.

Received copy of the above amendments.

McCULLOUGH AND BOYD,
Sol'rs for some Def'ts.
SIDNEY AND SMITH AND SON,
For some one or more Def'ts.
W. H. PATTERSON,
Sol'r for part of Def'ts.

AUGUST 5, 1871.

Received copy of above amendments.

GEORGE & LOUGHBOROUGH,
Att'ys for some Def'ts.
SHARPSTEIN & HASTINGS,
Sol's for some of Def'ts.
J. A. WOODSON,
For some of Def'ts.
R. P. & JABISH CLEMENT,
Sol's for some of Def'ts.
C. WILTRAM,
Att'y for Def't Buel.
SHARP AND LLOYD,
Att'eys for some of Def'ts.
187 CYRIL J. GREY,
In personam.
S. M. WILSON,
For certain Def'ts.
ISAAC BAGGS,
Attorney for Reed.

(Endorsed:) Filed August 7th, 1871. L. S. B. Sawyer, clerk, by J. F. O'Beirne, d. c.

188 *Demurrer of Union Lumber Association.*

In the circuit court of the United States, ninth circuit, district of California.

JOHN KIELEY ET AL.
v.
JOHN A. MCGLYNN ET AL.

The demurrer of the Union Lumber Association, one of the defendants, to the bill of complaint of John Kieley and other complainants.

This defendant by protestation, not confessing or acknowledging any or all of the matters and things in the said complainants' bill to be *here*, in such manner and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer sheweth:

1st. That it appears on the face of said bill that this honorable court jurisdiction power to grant or afford the defendants relief, or any part thereof, sought by said bill.

2nd. That it affirmatively appears on the face of said complaint that this honorable court has not jurisdiction to hear and determine the matter and things sought by said plaintiff to have determined and adjudged.

3d. That the said complainants have not in or by the said bill made or stated such a case as entitles them, or either of them, to any such discovery or relief as is thereby sought and prayed for from or

189 against this defendant.

Wherefore this defendant demands the judgment of this honorable court whether he shall be compelled to make any further or any other answer to the said bill, or any of the matters and things therein contained, and prays to be hence dismissed with his reasonable costs in this behalf sustained.

W'M H. PATTERSON,
Sol'r for the Defendants.

I, the undersigned, a counsellor of the circuit court above named, hereby certifies that I have examined the foregoing demurrer, and that in my opinion said demurrer is well founded in point of law.

W. W. STOW,
Of Counsel for Def't in said Demurrer.

U. S. OF AMERICA,
State of California, City and County of San Francisco:

The undersigned, being sworn, says, I am president of the Union Lumber Association, one of the defendants in the above-entitled action, and its managing officer. The foregoing demurrer is not interposed for delay.

W. J. ADAMS, *President.*

Sworn before me this 1[illegible]th day of August, 1871.

W. H. CHEVERS,
Notary Public.

190 U. S. OF AMERICA,
State of California, City and County of San Francisco:

The undersigned, being sworn, says, I am the defendant named in the foregoing demurrer. Said demurrer is not interposed for delay.

Subscribed and sworn before me this day of August, 1871.

(Endorsed:)

Service of within demurrer admitted this 11th day of August, 1871.
W'M W. CHIPMAN,
Sol'r for Compl'ts.

Filed August 11, 1871. L. S. B. Sawyer, clerk, by J. F. O'Beirne, d. c.

191 *Demurrer to amended bill of Julius George and Julian B. Harris.*

In the circuit court of the United States for the district of California.

JOHN KIELEY ET AL., PLAINTIFFS,
vs.
JOHN A. MCGLYNN ET AL., DEFENDANTS. } In equity.

The complainants having filed amendments to their complaint herein, the joint and several demurrer of Julius George and Julian B. Harris, defendants, to the bill of complaint of the above-named complainants, so amended shows:

The said defendants, protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint cont'd to be true in such manner and form as the same are therein and thereby set forth and alleged, do*th* demur in law to the said bill; and, for cause of demurrer, show*eth* that the said complainants have not, by their said bill, made such a case as entitles them to any discovery or relief from or against these defendants, or any or either of them, touching the matters contained in the said bill, or any of such matters. And for special causes of demurrer the defendants aver—

192 First. that this honorable court has no jurisdiction of the matters and things set forth in the complaint, the same not being cognizable in equity.

Second. That the sole and exclusive jurisdiction of the matters and things set forth in the bill of complaint of the plaintiffs is vested in the probate court of the city and county of San Francisco, of the State of California.

Third. That this honorable court has no jurisdiction of the matters and things set forth in the complaint, the said jurisdiction being exclusively vested in the district courts of the State of California.

Fourth. That in and by virtue of the statutes of the State of California, the said probate of said will of said David C. Broderick, deceased, is final and conclusive, the same not having been contested within one year after said probate.

Fifth. That this action was not commenced within three years next after the said sales, by the executors of said Broderick, deceased, of the property described in the complaint.

Sixth. That the causes of action set forth in the complaint did not, nor did either of them, accrue within four years next before the commencement of this action.

Seventh. That the causes of action set forth in the complaint did not, nor did either of them, accrue within three years next before
193 the commencement of this action.

Eighth. That the causes of action set forth in the complaint did not, nor did either of them, accrue within five years next before the commencement of this action.

Ninth. The said cause of action set forth in the said complaint is stale and antiquated, and no sufficient reason is assigned for the long delay in commencing said action.

Tenth. The said sale by said executors was made under a valid order and decree of the said probate court, and the defendants became purchasers whilst the same was in full force and effect.

Eleventh. That the said bill of complaint does not state facts sufficient to constitute a cause of action against these defendants or either of them.

Wherefore these defendants respectfully demand the judgment of this honorable court whether they shall be compelled to make any further or other answer to the said bill of complaint or any of the matters and things therein contained, and pray to be hence dismissed with their reasonable costs in this behalf expended.

And these defendants, respectfully, by protestation, not confessing or acknowledging all or any of the matters and things in the complainants' bill to be true in such manner and form as the same are herein set forth and alleged, as to so much and such parts of said bill as seeks
194 that these defendants may answer and set forth whether said McGlynn and Butler caused application to be made to said probate court for, and obtained, an order of sale of the estate of said Broderick, deceased, and whether they sold the whole of said estate, and as to whether, at the time of said sale, the matters and things set forth in said complaint in that behalf, in reference to said last will and testament of said Broderick, and the probate thereof, was a matter of public or general notoriety, and whether the said defendants and those under whom they claim had notice thereof, and whether these defendants claim said lands, or any of them, under said probate sales, and conveyances by virtue thereof, and that prays that these defendants may answer the same, and that prays that these defendants as purchasers at said probate sale, or claimants under said purchasers, stand charged as trustees of said complainants, and that they be compelled to convey to said complainants all interest and title acquired in said estate, and that an account of said probate sale be taken, do demur, and for causes of demurrer show—

First. That the said complainants have not in said parts of said bill made or stated such a case as doth or ought to entitle them or any of them to any discovery or relief as is thereby sought and prayed for from or against the defendants or either of them.

Second. That as to said parts of said complaint this honorable
195 court has no jurisdiction, the *the* same being exclusively cognizable in the probate court of the city and county of San Francisco, and in the supreme court of the State of California on appeal.

Third. That this honorable court, as to said parts of said complaint, has no jurisdiction of the subject-matter.

Fourth. That said bill of complaint, as to said parts and all relief in respect thereto, is barred by the statutes of the State of California in such case made and provided, because said action was not commenced within three years next after said sale.

Fifth. That said cause of action, as to said parts of said complaint

did not accrue within three years next before the commencement of this action.

Sixth. That said cause of action, as to said parts of said complaint, did not accrue within four years next before the commencement of this action.

Seventh. That said cause of action, as to said parts of said complaint, did not accrue within five years next before the commencement of this action.

Eighth. That this action was not commenced within three years next after the said cause of action first accrued, as to said parts of said complaint.

And therefore, and for other good causes of demurrer in the said bill contained, as to so much of the said complainants' bill as is de-
196 murred thereto, as aforesaid, these defendants do demand the judgment of this honorable court whether they shall be compelled to make answer to such part of the said bill as is so demurred unto as aforesaid, and pray to be hence dismissed with their reasonable costs in this behalf expended.

A. H. LOUGBOROUGH,
Sol'r for said Defendants, Julius George & J. B. Harris.

(Endorsed:) Filed 15 August, 1871. L. S. B. Sawyer, clerk. By J. F. O'Beirne, d. c.

197 At a stated term, to wit, the June term, A. D. 1871, of the circuit court of the United States of the ninth judicial circuit in and for the district of California, held at the court-room in the city of San Francisco, on Monday, September 4th, A. D. 1871:

Present, the honorable Lorenzo Sawyer, circuit judge.

Enrolment of decree.

JOHN KIELEY AND OTHERS
v.
JOHN A. MCGLYNN AND OTHERS, } Equity.

The plaintiff filed his bill of complaint, which is hereto annexed, on the 16th day of December, A. D. 1869, against the several defendants therein named. A subpœna to appear and answer in said cause was thereupon issued.

The defendant J. J. Reichenback appeared in propria persona, in said cause; the defendants W'm K. Deitrich and Emma A. Litchfield appeared in said cause by their solicitor, W'm H. Patterson, esq.; the defendant John H Turney by his solicitor', McCullough and Boyd, esquires;
the defendants W'm Bunce and J. S. Butters in propria persona;
198 the defendants the American Russian Commercial Company, Charles Baum and P. G. Partridge, by their solicitors, Sidney V. Smith and Son, esquires; the defendants C. P. Hughes and T. M. Roach by Campbell, Fox and Campbell, esquires, their solicitors; and the defendant John Turnbull by Thompson and Wilson, esquires, his solicitors.

On the 7th day of March, A. D. 1870, the defendant John M. Todd filed his disclaimer herein, which is hereto annexed.

On the same day the defendant Francis Read filed his answer to the said bill of complaint, which is annexed hereto.

On the 8th day of March, A. D. 1870, a stipulation to dismiss said action, as to defendant John Twohig, was filed herein; the same is annexed hereto.

Seventh. That the causes of action set forth in the complaint did not, nor did either of them, accrue within three years next before
193 the commencement of this action.

Eighth. That the causes of action set forth in the complaint did not, nor did either of them, accrue within five years next before the commencement of this action.

Ninth. The said cause of action set forth in the said complaint is stale and antiquated, and no sufficient reason is assigned for the long delay in commencing said action.

Tenth. The said sale by said executors was made under a valid order and decree of the said probate court, and the defendants became purchasers whilst the same was in full force and effect.

Eleventh. That the said bill of complaint does not state facts sufficient to constitute a cause of action against these defendants or either of them.

Wherefore these defendants respectfully demand the judgment of this honorable court whether they shall be compelled to make any further or other answer to the said bill of complaint or any of the matters and things therein contained, and pray to be hence dismissed with their reasonable costs in this behalf expended.

And these defendants, respectfully, by protestation, not confessing or acknowledging all or any of the matters and things in the complainants' bill to be true in such manner and form as the same are herein set forth and alleged, as to so much and such parts of said bill as seeks
194 that these defendants may answer and set forth whether said McGlynn and Butler caused application to be made to said probate court for, and obtained, an order of sale of the estate of said Broderick, deceased, and whether they sold the whole of said estate, and as to whether, at the time of said sale, the matters and things set forth in said complaint in that behalf, in reference to said last will and testament of said Broderick, and the probate thereof, was a matter of public or general notoriety, and whether the said defendants and those under whom they claim had notice thereof, and whether these defendants claim said lands, or any of them, under said probate sales, and conveyances by virtue thereof, and that prays that these defendants may answer the same, and that prays that these defendants as purchasers at said probate sale, or claimants under said purchasers, stand charged as trustees of said complainants, and that they be compelled to convey to said complainants all interest and title acquired in said estate, and that an account of said probate sale be taken, do demur, and for causes of demurrer show—

First. That the said complainants have not in said parts of said bill made or stated such a case as doth or ought to entitle them or any of them to any discovery or relief as is thereby sought and prayed for from or against the defendants or either of them.

Second. That as to said parts of said complaint this honorable
195 court has no jurisdiction, the *the* same being exclusively cognizable in the probate court of the city and county of San Francisco, and in the supreme court of the State of California on appeal.

Third. That this honorable court, as to said parts of said complaint, has no jurisdiction of the subject-matter.

Fourth. That said bill of complaint, as to said parts and all relief in respect thereto, is barred by the statutes of the State of California in such case made and provided, because said action was not commenced within three years next after said sale.

Fifth. That said cause of action, as to said parts of said complaint

did not accrue within three years next before the commencement of this action.

Sixth. That said cause of action, as to said parts of said complaint, did not accrue within four years next before the commencement of this action.

Seventh. That said cause of action, as to said parts of said complaint, did not accrue within five years next before the commencement of this action.

Eighth. That this action was not commenced within three years next after the said cause of action first accrued, as to said parts of said complaint.

And therefore, and for other good causes of demurrer in the said bill contained, as to so much of the said complainants' bill as is de-
196 murred thereto, as aforesaid, these defendants do demand the judgment of this honorable court whether they shall be compelled to make answer to such part of the said bill as is so demurred unto as aforesaid, and pray to be hence dismissed with their reasonable costs in this behalf expended.

A. H. LOUGBOROUGH,
Sol'r for said Defendants, Julius George & J. B. Harris.

(Endorsed:) Filed 15 August, 1871. L. S. B. Sawyer, clerk. By J. F. O'Beirne, d. c.

197 At a stated term, to wit, the June term, A. D. 1871, of the circuit court of the United States of the ninth judicial circuit in and for the district of California, held at the court-room in the city of San Francisco, on Monday, September 4th, A. D. 1871:

Present, the honorable Lorenzo Sawyer, circuit judge.

Enrolment of decree.

JOHN KIELEY AND OTHERS
v.
JOHN A. MCGLYNN AND OTHERS, } Equity.

The plaintiff filed his bill of complaint, which is hereto annexed, on the 16th day of December, A. D. 1869, against the several defendants therein named. A subpœna to appear and answer in said cause was thereupon issued.

The defendant J. J. Reichenback appeared in propria persona, in said cause; the defendants W'm K. Deitrich and Emma A. Litchfield appeared in said cause by their solicitor, W'm H. Patterson, esq.; the defendant John H Turney by his solicitor', McCullough and Boyd, esquires;
the defendants W'm Bunce and J. S. Butters in propria persona;
198 the defendants the American Russian Commercial Company, Charles Baum and P. G. Partridge, by their solicitors, Sidney V. Smith and Son, esquires; the defendants C. P. Hughes and T. M. Roach by Campbell, Fox and Campbell, esquires, their solicitors; and the defendant John Turnbull by Thompson and Wilson, esquires, his solicitors.

On the 7th day of March, A. D. 1870, the defendant John M. Todd filed his disclaimer herein, which is hereto annexed.

On the same day the defendant Francis Read filed his answer to the said bill of complaint, which is annexed hereto.

On the 8th day of March, A. D. 1870, a stipulation to dismiss said action, as to defendant John Twohig, was filed herein; the same is annexed hereto.

On the 10th day of March, A. D. 1870, in pursuance of an order of this court, service on all the defendants, who had been theretofore served with process of subpœna, but who had not appeared in said action, was set aside; a certified copy of said order is appended hereto.

On the 2d day of April, A. D. 1870, the defendant J. J. Reichenbach filed his demurrer to the bill herein, which demurrer is hereto annexed.

199 A replication to the answer of Francis Read herein was filed on the 4th day of April, 1870, which replication is hereto annexed.

On the 8th day of April, 1870, an order dismissing said cause as to Charles Minturn was made and entered on the minutes of this court, in pursuance of a stipulation of dismissal herein filed, which stipulation and a certified copy of the order of dismissal are hereto annexed.

On the 20th day of April, A. D. 1870, the defendant P. G. Partridge filed his plea herein, which is annexed hereto.

On the 18th day of June, A. D. 1870, an order was made and entered in this cause that an alias subpœna issue herein; a certified copy of said order is appended hereto.

On the 18th day of June, A. D. 1870, in pursuance of the order of court above last recited, an alias subpœna was issued in this cause returnable on the first Monday of August following, and was served personally on the defendants previous to the return day thereof, as appears by the marshal's return thereto annexed; said alias writ of subpœna is annexed thereto.

200 The defendants J. B. Felton and Clark Churchill appeared in propria persona in said cause, and the other defendants by their respective solicitors.

On the 17th day of August, A. D. 1870, in pursuance of an order of court, made and entered herein, a certified copy of which is hereto annexed, the plaintiffs filed their amendments to the original bill of complaint, which amendments are hereto annexed.

On the 1st day of September, A. D. 1870, a stipulation was filed and an order made and entered thereon dismissing this cause as to the board of education of the city and county of San Francisco, which stipulation and a certified copy of said order are hereto annexed.

On the 5th day of September, A. D. 1870, an order was made and entered herein, and a stipulation filed consenting thereto, that said cause be dismissed as to C. W. Wingard, and as to certain property mentioned in said stipulation; the said stipulation and a certified copy of the order of court dismissing said action in accordance therewith, are hereto annexed.

On the 10th day of September, A. D. 1870, the defendant Daniel E. Hayes, and others, filed their answer, which is hereto annexed.

On the 19th day of September, A. D. 1870, the defendant
201 Clark Churchill filed his demurrer herein, which is annexed hereto.

On the 21st day of September, A. D. 1870, a stipulation consenting to the dismissal of said action as to the defendant P. G. Partridge, was filed herein; said stipulation is annexed hereto.

On the 22nd day of September, A. D. 1870, in pursuance of the stipulation herein last set forth, an order was made and entered on the minutes of this court dismissing said action as to defendant P. G. Partridge.

On the 3d day of October, A. D. 1870, a replication to the answer of

Daniel E. Hayes, and others, was filed herein; said replication is hereto annexed.

On the same day last above named *day* an order was made and entered dismissing said cause as to defendant P. G. Partridge; a certified copy of said order is annexed hereto.

On the 13th day of October, A. D. 1870, the defendants James Orr and others filed their answer to the bill of complaint herein, which answer is annexed hereto.

On the 18th day of October, A. D. 1870, a stipulation dismissing said cause as to George Y. Loring was filed herein, which stipulation is hereto annexed.

202 On the 25th day of October, A. D. 1870, and on the 6th day of January, A. D. 1871, orders were made dismissing this action as to defendant' Clark Churchill and Daniel Coney, in accordance with stipulations consenting thereto; said stipulations and copies of the orders above set forth are hereto annexed.

The following demurrers to the bill of complaint herein were filed on the days set opposite the names of the defendant, and are hereto annexed:

Demurrer of	George Hudson	29 October,	1870.
" "	Thomas G. Maguire and C. H. Cordes	31 "	"
" "	E. B. Kingsley, et al	31 Dec.	"
" "	W'm Gassert	18 January,	1871.
" "	John Wool, & al	27 "	"
" "	John A. McGlynn	" "	"
" "	C. Z. Capp	6 Feb'y	"
" "	Julius George and Julian B. Harris	20 March,	"
" "	Same	15 Aug't,	"
" "	Union Lumber Association	11 "	"

On the 9th day of November, A. D. 1870, the complainant filed a replication to the answer of James Orr and others, which replication is hereto annexed.

203 On the 4th day of February, A. D. 1871, the defendant James Hamilton filed his answer to the bill of complaint herein; said answer is hereto annexed.

On the 24th day of June, A. D. 1871, the defendant Charles B. Holmes and others filed their answer herein, which is also annexed hereto.

A replication to the answer of Charles S. Holmes and others was filed on the 1st day of August, 1871, and is annexed hereto.

On the 7th day of August, A. D. 1871, the plaintiff, by leave of the court previously obtained, filed his amendments to the bill of complaint herein, and which are hereto annexed.

On the 4th day of September, A. D. 1871, the cause having been brought to a hearing, a final decree was made and entered therein in the words and figures following, to wit:

In the circuit court of the United States, district of California, ninth circuit.

JOHN KIELEY ET AL., COMPLAINANTS, *v.* JOHN A. MCGLYNN ET AL., DEFENDANTS. } No. 849. In equity.

204 This cause coming on to be heard in open court, at the June

term thereof, to wit, on the fourth day of September, A. D. eighteen hundred and seventy-one, on the respective demurrers of the defendants to the amended bill of complaint herein, William W. Chipman, esquire, appearing as solicitor for complainants, and the defendants appearing by their respective solicitors, and the same having been fully heard and argued by the respective solicitors and submitted, and the court having considered the same and being fully advised, ordered that said demurrer of said defendants to the amended bill of complaint of said plaintiffs be allowed and sustained, and that said bill of complaint be dismissed.

And no further amendments of said bill of complaint having been moved or allowed, on motion of defendants' solicitors, it is ordered, adjudged, and decreed that the complainants take nothing by their said bill of complaint, but that the same be and hereby is dismissed, and that the defendants have and recover of the plaintiffs the costs of the defendants in this behalf expended, taxed at five hundred and fourteen $\frac{30}{100}$ dollars, ($514.30.)

LORENZO SAWYER,
Circuit Judge.

(Endorsed:) Filed and entered 4th September, 1871. L. S. B. Sawyer, clerk.

205 Whereupon the said pleadings, orders, and final decree, together with other papers in said cause, are duly annexed hereto, and this decree is duly signed, filed, and enrolled, pursuant to the practice of this court.

Attest, &c.
[SEAL.] L. S. B. SAWYER, *Clerk.*

(Endorsed:) "Enrolled papers filed 19th September, 1871. L. S. B. Sawyer, clerk."

206 At a stated term of the United States circuit court for the district of California, in the ninth judicial circuit, held at the court-room in the city of San Francisco, said district, on Monday, the twenty-second day of July, in the year of our Lord one thousand eight hundred and seventy-two:

Present, honorable Lorenzo Sawyer, circuit judge.

Order allow'g an appeal.

JOHN KIELEY & AL., }
v. }
JOHN A. MCGLYNN & AL. }

At this day, on motion of W. W. Chipman, esquire, solicitor for complainants, it is ordered that an appeal from the decision and decree in the above-entitled cause, filed and entered on the fourth day of September, 1871, of the June term, A. D. 1870, of this court, to the Supreme Court of the United States, be, and the same is hereby, allowed, and that a certified transcript of the pleadings, depositions, evidence, stipulations, and proceedings be forthwith transmitted to the Supreme Court of the United States. And it is further ordered that the bond on appeal herein, to be given by complainants, be in the sum of five hundred dollars.

207 *Bond on appeal.*

Circuit court of the United States, ninth judicial circuit, district of California.

JOHN KIELEY AND OTHERS, COMPLAINANTS & appellants, *v.* JOHN A. MCGLYNN AND OTHERS, RESPONDENTS and appellees. } On appeal to U. S. Supreme Court.

Know all men by these presents, that we, Adam Lenhardt, of the city and county of San Francisco, State of California, and Emil Kower, of the same place, are held and firmly bound unto the respondents in this suit, viz: John A. McGlynn, David Jones, John Wool, Isaac Lankershim, Reuben Morton, John Murphy, Ann Purcell, T. Palmer, J. Higgins, P. Cullen, T. McManus, Patrick Linehan, John Connor, Mary Levine, Edward McGarry, S. C. Hastings, F. F. McManus, Margaret McMillan, Rose Glancey, J. Aaron, H. Moynehan, M. Tarpey, Patrick Hay, Sophia J. Vandewater, executrix of estate of R. J. Vandewater, deceased, F. Fagan, Jertham Regan, Henry Casey, John Carroll, D. Hayes, J. M. Cleaveland, C. G. Hughes, T. M. Roach, Nicholas Campbell, T. J. Moynihan, Bernhard Gattel, R. Garratt, Alexander Hoy, D. W. Walton, Sam. Morganstern, Adolph Kaskell, C. Nobbman, William Bunce, J. S. Butters, A. B. Richardson, Samuel A. Morrison, P. E. Brady, C. S. Moulton, R. Grier, Patrick Troy, E. A. Litchfield, W. K. Deitrich, James J. Gardner, P. McAran, J. J. Reichenbach, A. J. Donzell.
208 Charles Baum, "American Russian Commercial Company," B. S. Fitch, John Wigmore, Frederick Billings, Eugene Kelly, Jane E. Johnson, O. H. Keyes, Benjamin Smith, W. J. Laury, Julius George John Pershbaker, Charles Meyer, William R. Garrison, "Union Lumber Association," John L. Gardner, C. P. Head, David D. Colton, David Mahoney, James R. Dickey, B. S. Brooks, John B. Felton, James Houston, O. C. Breed, John Middleton, F. Read, Ed. Franklin, James Creamer, Michael Reilly, A. C. Wass, A. W. Manning, estate of J. W. Bean, deceased, John H. Morehouse, D. Bloom, X. F. Scherr, Kennedy, J. Boucher, H. C. Whitcomb, H. Ferguson, H. Hilgoth, J. Mahoney, C. Mahoney, W. A. Grover, J. Riordan, Robert Hazard, A. Mogan, J. Mogan, Caroline Jones, Gendir, Edward Megrath, B. F. Ames, J. H. Kelly, James Lyng, Jeremiah Maloney, Ann French, Ann Duffy, Samuel Crim, John Center, Isaac Wiley, Ellen Douglass, J. O'Brien, J. Lange, Charles S. Haley, J. Sturtevant, M. A. Thurston, M. Andrews, J. Vaughn, Allen Lee, J. J. Moore, Michael Kane, D. S. Witherly, Thomas J. Welsh, John Knownburg, James Kenney, A. Livingston, Patrick Sullivan, Thomas Peyser, J. H. Hoadley, J. W. Rule, Oscar D. E. Lewis, C. Kramer, Thomas Swanton, James Thorn, S. A. Vance, Sarah Ensey, R. Bradshaw, James Behan, W. W. Taylor, E. L. Hall, William Ward, Thomas Golden, Margaret Downing, C. Hubbell, John Comerford, Hugh Kennedy, William Dakin, Henry Chester, Peter Burns, L. Dwyer, Charlotte F. Gordon, Robert Lane, C. D. Hoyt, J. H. McGovern, T. Pendergast, Robert Mellon, C. M. Beckler, Thomas Cusick, H. T. Lynch, Thomas Emery, S. S. Sprague, William Hampshire, A. Mills, J. R. Deardorff, Catharine Harvey,
209 Joseph Sullivan, H. H. Noble, C. E. Long, C. L. Wardell, William Bluett, D. C. Dunn, Peter Dunn, H. C. Flower, O. E. Johnson, James Forbes, Thomas Connell, James Hamilton, James

term thereof, to wit, on the fourth day of September, A. D. eighteen hundred and seventy-one, on the respective demurrers of the defendants to the amended bill of complaint herein, William W. Chipman, esquire, appearing as solicitor for complainants, and the defendants appearing by their respective solicitors, and the same having been fully heard and argued by the respective solicitors and submitted, and the court having considered the same and being fully advised, ordered that said demurrer of said defendants to the amended bill of complaint of said plaintiffs be allowed and sustained, and that said bill of complaint be dismissed.

And no further amendments of said bill of complaint having been moved or allowed, on motion of defendants' solicitors, it is ordered, adjudged, and decreed that the complainants take nothing by their said bill of complaint, but that the same be and hereby is dismissed, and that the defendants have and recover of the plaintiffs the costs of the defendants in this behalf expended, taxed at five hundred and fourteen $\frac{30}{100}$ dollars, ($514.30.)

LORENZO SAWYER,
Circuit Judge.

(Endorsed:) Filed and entered 4th September, 1871. L. S. B. Sawyer, clerk.

205 Whereupon the said pleadings, orders, and final decree, together with other papers in said cause, are duly annexed hereto, and this decree is duly signed, filed, and enrolled, pursuant to the practice of this court.

Attest, &c.
[SEAL.] L. S. B. SAWYER, *Clerk.*

(Endorsed:) "Enrolled papers filed 19th September, 1871. L. S. B. Sawyer, clerk."

206 At a stated term of the United States circuit court for the district of California, in the ninth judicial circuit, held at the court-room in the city of San Francisco, said district, on Monday, the twenty-second day of July, in the year of our Lord one thousand eight hundred and seventy-two:

Present, honorable Lorenzo Sawyer, circuit judge.

Order allow'g an appeal.

JOHN KIELEY & AL.,
v.
JOHN A. MCGLYNN & AL.

At this day, on motion of W. W. Chipman, esquire, solicitor for complainants, it is ordered that an appeal from the decision and decree in the above-entitled cause, filed and entered on the fourth day of September, 1871, of the June term, A. D. 1870, of this court, to the Supreme Court of the United States, be, and the same is hereby, allowed, and that a certified transcript of the pleadings, depositions, evidence, stipulations, and proceedings be forthwith transmitted to the Supreme Court of the United States. And it is further ordered that the bond on appeal herein, to be given by complainants, be in the sum of five hundred dollars.

207 *Bond on appeal.*

Circuit court of the United States, ninth judicial circuit, district of California.

JOHN KIELEY AND OTHERS, COMPLAINANTS & appellants, v. JOHN A. MCGLYNN AND OTHERS, RESPONDENTS and appellees. } On appeal to U. S. Supreme Court.

Know all men by these presents, that we, Adam Lenhardt, of the city and county of San Francisco, State of California, and Emil Kower, of the same place, are held and firmly bound unto the respondents in this suit, viz: John A. McGlynn, David Jones, John Wool, Isaac Lankershim, Reuben Morton, John Murphy, Ann Purcell, T. Palmer, J. Higgins, P. Cullen, T. McManus, Patrick Linehan, John Connor, Mary Levine, Edward McGarry, S. C. Hastings, F. F. McManus, Margaret McMillan, Rose Glancey, J. Aaron, H. Moynehan, M. Tarpey, Patrick Hay, Sophia J. Vandewater, executrix of estate of R. J. Vandewater, deceased, F. Fagan, Jertham Regan, Henry Casey, John Carroll, D. Hayes, J. M. Cleaveland, C. G. Hughes, T. M. Roach, Nicholas Campbell, T. J. Moynihan, Bernhard Gattel, R. Garratt, Alexander Hoy, D. W. Walton, Sam. Morganstern, Adolph Kaskell, C. Nobbman, William Bunce, J. S. Butters, A. B. Richardson, Samuel A. Morrison, P. E. Brady, C. S. Moulton, R. Grier, Patrick Troy, E. A. Litchfield, W. K. Deitrich, James J. Gardner, P. McAran, J. J. Reichenbach, A. J. Donzell.

208 Charles Baum, "American Russian Commercial Company," B. S. Fitch, John Wigmore, Frederick Billings, Eugene Kelly, Jane E. Johnson, O. H. Keyes, Benjamin Smith, W. J. Laury, Julius George John Pershbaker, Charles Meyer, William R. Garrison, "Union Lumber Association," John L. Gardner, C. P. Head, David D. Colton, David Mahoney, James R. Dickey, B. S. Brooks, John B. Felton, James Houston, O. C. Breed, John Middleton, F. Read, Ed. Franklin, James Creamer, Michael Reilly, A. C. Wass, A. W. Manning, estate of J. W. Bean, deceased, John H. Morehouse, D. Bloom, X. F. Scherr, Kennedy, J. Boucher, H. C. Whitcomb, H. Ferguson, H. Hilgoth, J. Mahoney, C. Mahoney, W. A. Grover, J. Riordan, Robert Hazard, A. Mogan, J. Mogan, Caroline Jones, Gendir, Edward Megrath, B. F. Ames, J. H. Kelly, James Lyng, Jeremiah Maloney, Ann French, Ann Duffy, Samuel Crim, John Center, Isaac Wiley, Ellen Douglass, J. O'Brien, J. Lange, Charles S. Haley, J. Sturtevant, M. A. Thurston, M. Andrews, J. Vaughn, Allen Lee, J. J. Moore, Michael Kane, D. S. Witherly, Thomas J. Welsh, John Knownburg, James Kenney, A. Livingston, Patrick Sullivan, Thomas Peyser, J. H. Hoadley, J. W. Rule, Oscar D. E. Lewis, C. Kramer, Thomas Swanton, James Thorn, S. A. Vance, Sarah Ensey, R. Bradshaw, James Behan, W. W. Taylor, E. L. Hall, William Ward, Thomas Golden, Margaret Downing, C. Hubbell, John Comerford, Hugh Kennedy, William Dakin, Henry Chester, Peter Burns, L. Dwyer, Charlotte F. Gordon, Robert Lane, C. D. Hoyt, J. H. McGovern, T. Pendergast, Robert Mellon, C. M. Beckler, Thomas Cusick, H. T. Lynch, Thomas Emery, S. S. Sprague, William Hampshire, A. Mills, J. R. Deardorff, Catharine Harvey,

209 Joseph Sullivan, H. H. Noble, C. E. Long, C. L. Wardell, William Bluett, D. C. Dunn, Peter Dunn, H. C. Flower, O. E. Johnson, James Forbes, Thomas Connell, James Hamilton, James

G. Holmes, T. S. Russell, Joseph Gerze, Thomas McDonough, Rosalie Straub, D. Cavanagh, Thomas H. Porter, John C. Piercy, Louis Zeh, H. Mohan, William Freeborn, L. Roche, E. Roche, William McGarren, T. Norton, Edward Barry, H. D. Lathrop, Margaret Coney, W. R. York, M. Douglass, B. McLaughlin, A. Schenck, S. A. Vance, Andrew McManus, C. H. Cordes, Patrick Dempsey, A. Herbert, William McCormick, Maria Byron, Jane Clinton, J. W. Farren, William Sparks, Peter Barker, Thomas Phillips, John Brodie, Hugh Dolan, John Turnbull, W. H. Pierson, W. Sutton, J. Harkins, J. Malone, W. Barry, J. J. Dixon, T. Morton, George S. Crim, A. Bryan, Catharine Kenny, John Shea, M. Burns, W. McMahon, Daniel Shea, Margaret Harlock, Thereasa Dirks, John Cannon, J. Orr, James Kelly, F. McGlancy, M. Kiernan, James McDonough, A. J. Rutherford, John Cunningham, D. H. Kearny, F. Odermatt, James Lang, W. A. Cory, Charlotte Watts, T. J. Kimball, Patrick R. Hanna, Richard Haynes, Robert T. Browne, Mary Sweeney, James Sullivan, Alexander Heney, David M. Kelton, David Thessereau, F. Sullivan, P. O'Brien, J. G. McEvoy, Patrick Haynes, John McBride, Pierre Blick, William Shackleton, Neil Barr, Joseph Pepin, Mayery Bradley, James Dougherty, M. McLaughlin, Thomas Peterson, John Downey, P. McDermott, A. Amundsen, Daniel Sullivan, Dennis Sullivan, George Schuerg, Daniel Keefe, John R. Conway, D. McMullan, John D. Dement, Thomas
210 Emery, J. H. Pickens, R. T. Delano, Francis R. Kelly, C. H. Chamberlain, T. W. Walker, Catherine Curley, H. Anderson, W. Worfot, Joseph Lelong, John Twohig, C. F. Russer, Bart. Crowley, R. C. Markel, P. R. O'Brien, A. Kurtz, John Meagher, Thomas G. Maguire, W. C. Ralston, John Phillips, John F. Sullivan, Dennis Gorman, Morris Sheahan, Clark Churchill, P. Shenkel, B. E. Arnold, Robert White, Eugene Casserly, Margaret Coleman, H. P. Gallagher, J. S. Alemany, George Kare, Ellen Mulhearn, Margaret Finlin, W. H. Sansome, John Gross, Robert Hill, Joseph Kelly, James O'Shea, T. Noonan, Charles Krause, J. Palmer, George Hermann, John C. Meyer, H. H. Shirtmeier, L. F. Hoadley, William Cruce, J. G. Perkins, John Tenney, C. Sullivan, McConnell, George T. Davis, Tim. Downey, John Brown, James Sullivan, Dennis Brady, George E. Darling, H. A. Cobb, M. McGaughran, Margaret McKeon, Bridget Bushman, A. Schuminsher, William Burling, Hannah McAnnally, W. Laplain, M. Collins, H. A. Benjamin, Peter Johnson, Robert Keefe, Patrick Angliers, Mary A. Murray, Mary Piratski, George Moore, Mary McSweeney, Daniel Burns, Elizabeth Murray, J. F. Hannagan, Ann Winn, Lawrence Tilby, W. H. Pritchard, Mary E. Nelson, F. W. Bellisle, Hugh Dolan, Patrick Kelly, John Fennessey, Thomas Mooney, Alice Cahill, Tim. Driscoll, Ellen Sullivan, Luke Hackett, Alice Moss, Charles McPhillany, D. Fennessey, Joseph Quigley, Mary Ash, Lawrence Higgins, James Murphy, Frederick Bull, Frank McConnolly, L. Altschul, John Hahn, E. D. Catler, William L. Murphy, Adolph C. Weber, John Schant, Jacob Price, John L. Durkee, R. H. Monck, M. Kerr, Michael Powers, M. Roux, S. A. Winall, J. W. Crawford, C. S. Capp, John H. Turney, James T. Boyd, Lucius A. Booth, John Taylor, John Kehoe, William Cushman, W. H. Da-
211 vis, Eben W. Park, F. Kilpatrick, John Kane, Thomas Smith, John M. Todd, Stanhope Dickinson, Job Bigwood, John Agnew, Ellen Regan, Hannah Robson, Thomas Kelly, Peter G. Peltret, William Corbett, John Treat, Kate Hann, M. O'Connor, Thomas Finnegan, Charles Kellett, Mary Crowell, Charles P. Gibbons, Mary Ann Murphy, John B. Brophy, J. B. Miller, Mary Ann Winall, A. W. Daves, Ira McGray, Elisha Presley, John McGeary, T. J. Winship, Andrew Russell,

David Russell, A. Esnault, Mary Phillips, George S. Kettredge, Thomas Byrne, Mary J. Gerberding, Joseph Boardman, City and County of San Francisco, J. Levy, Omnibus Railroad Company, Murray, Noble, Rose W. Cron, Edward Llewelling, Edward Sweeney, John B. Goldstone, C. McManus, Daniel McCarthy, E. B. Kingsley, George H. Parker, E. R. Harris, J. B. Murphy, Thomas Cummings, Constantine Muller, George W. Morse, Charles Smith, Henry Piege, James Clinton, Joseph P. Hoge, S. M. Wilson, James Peterson, James H. Reynolds, W. McKinney, W. Wolf, J. N. Finch, J. Morris, E. Kennedy, John Collin, Helena Dieterle, E. A. Reese, G. Bean, Samuel McCullough, John O. Earl, W. Irwin, J. B. Fry, E. Pestner, W. Welsh, Winslow, Williams, N. S. Arnold, J. G. Kittredge, John Hannigan, William Dick, Anna E. Smith, E. Sutherland, Jacob Rauch, Mrs. L. A. Mowry, William Saura, Augustus Roberts, Henry Arrison, Bridget Mulharen, E. W. Park, John M. Tully, estate of Robert Beatty, P. J. Postel, Edward A. Hagan, R. B. Cheeseman, N. E. Carr, Joseph Tuttle, John Regan, John D. Wilson, Josiah Moulton, John M. Shotwell, C. N. Hitchcock, H. Leonara, Henry Doscher, C. F. Swett, R. Finley, Thomas Wyatt, Daniel Hicks, R. H. Schunboff, Henry Mess, Donald Grant, B. Joost, Scheper, T. D. Sullivan, S. W. Dick, Hoyt, Sears, O. T. Giffin, W. H. Graves, E. R. Harris, P. Verplanck, Ellen Crocker, A. W. Stone, William Walsh, Arrie Van Wie, George
212 Treat, Henry Harms, B. Langan, Samuel Weilheimer, C. Schwartzwalter, Washington Bartlett, Henry C. Somers, Havey T. Kelton, H. S. Wheeler, S. D. Denny, Antoine Borel, Alfred Borel, Lafayette Carpenter, L. H. Bonesteel, A. Kohler, Thomas McKinstry, Henry Christie, Ann B. Whitton, L. Englander, P. J. Reddish, Edward Denny, S. W. Dick, Patrick Cleary, Francis D. Cleary, Helen M. Benton, J. H. Pohlker, Havey Hall, H. B. Richardson, George Davidson, Margaret R. DeLange, J. C. Parkinson, Thomas Noonan, H. K. Curtis, J. E. Steckler, D. A. Lancaster, E. J. Blanding, Charlotte R. Mozer, Patrick Doyle, Sumner J. Record, Francis Haraszthy, Henry S. Brooks, W. E. Domett, James McDevitt, F. Mozer, L. A. Booth, Sarah J. Barber, H'y A. Crane, P. Schuerdt, G. M. Brockius, Hiram C. Buster, E. C. Quenel, James McKew, E. Bauer, John P. Hawkins, F. Joost, H. H. Ellis, Tullis Argenti, James Devoe, jr., S. Linkton, Annie M. Winter, J. S. Morgan, C. S. Holmes, Howard Chapman, A. Rutherford, Lewis Soher, "San Francisco and San José Railroad Company," E. H. Doyle, Robert White, John Schroeder, A. B. Winegar, Thomas H. Zeigenfuss, Eleanor Deliese, C. Moneypenny, I. B. Watson, John G. Klumpke, J. C. Collins, G. Hudson, Horton, Mulford, H. J. Morton, Mary White, N. E. Hawley, R. P. Clement, N. Wynne, Mary Park, John M. Peck, J. B. Brown, H. H. Bodwell, J. E. Knowles, E. L. Mayberry, W. Murray, J. W. Fuller, Samuel Brunt, F. P. McMahon, Mary T. Klopenstine, John D. Wilson, Josiah Moulton, M. D. Heckman, Peter Carter, P. J. Kennedy, P. C. Fogarty, G. W. Bell, estate of Peter Johnson, L. W. Sawyer, A. E. Tate, W. K. Vanderslice, E. A. Wilson, Francis Blake, James Moffatt, R. Doyle, Charles A. Barnes, William Matheson, E. L. Montgomery, Mary Boyle, R. E. Davis, Charles Lauterwasser, Jeanette Harley, Asa Harker, Michael Tay, Catherine Parkinson, A. E. Bonnell, Peter Bunty, Emma C. Davis, Patrick Collins, S. G. Worden, Thomas H. Douglass, John Taylor, J. J. Bauer, Lydia Morton, Daniel Graham, Samuel
213 Foster J. Hamilton, J. A. Snook, Edward Worth, John Kearn, Johanna Wyman, Lawrence Dunn, Joseph Moore, Isaac H. Small, D. J. McCarthy, David B. Brown, H. W. Hathorne, J. Auley, Julia Cahalan, John Hart, John Hahn, J. T. Johnson, City and County of San

Francisco, Board of Commissioners of Fire Department, R. White, P. Reilly, Andrew Miley, (or Andrew Wiley,) James O'Donnell, Joseph Hughes, H. A. Crane, Cyrus D. Hoyt, Owen McCloskey, H. L. Davis, H. Maras, Mrs. C. W. Mann, James Boland, E. Held, Antoinette Steiger, Mary Sullivan, M. M. Flint, Michael McDowell, John Scarry, Emily Barron, W. Hawxhurst, George Whitney, Peter Postel, William Koch, Edward McKee, Edward Nelligan, R. McCrum, Mary Lincoln, Rose Ann McKinley, J. H. Hammond, N. C. Parish, A. Kolpenstine, John Heron, Albert Lawson, John W. Hayden, William Phillips, Patrick Winn, R. P. Clement, Clara Carre, Susan M. Hawkins, A. J. Smith, D. Hanlon, Joseph Windrow, Burke Perry, S. Aitken, Janet Harley, Mary Quirk, C. L. Lauterwasser, C. Hellwig, Charles Gay, Charles Poppe, John Manchester, Rufus Parker, W. L. Smith, Matthew Whitton, William Mitchell, Robert Pyne, Henry Somers, Edward Denny, John B. Wilson, Edward Schuerin, R. W. Mitchell, Peter Burns, Henry Rumpe, Michael Walsh, F. J. Sullivan, Peter Blick, A. C. Gay, Peter O'Brien, Michael McGorry, Edward F. Drew, Charles, Krause, Roger Donohue, Charles Kelley, Patrick Mulligan, C. Jacobson, L. Blumen, Elizabeth Carvahlo, John D. Wanz, Adeline Perrin, R. R. Swain, Julian Harris, Margaret Bruns, Claus Caspar, Nathan Simons, Herman Minot, Thomas Mitchell, C. Collins, Nelson Rock, John Manton, Filoy Laurens, William Doyle, John Hogan, Michael Keran, Charles J. Bush, Timothy S. Kelly, Thomas McGuire, and Salvo Brinkhart, in the sum of five hundred ($500) dollars, to be paid to the said defendants,
214 their executors or administrators, or the executors or administrators of either of them; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this sixteenth day of November, A. D. 1872.

Whereas John Kieley, Mary Kieley, George Wilson, Ann Wilson, and Ellen Lynch, complainants herein, have prosecuted an appeal to the Supreme Court of the United States of America to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the district of California, in the ninth judicial circuit:

Now, therefore, the condition of this obligation is such that if the above-named John Kieley, Mary Kieley, George Wilson, Ann Wilson, and Ellen Lynch shall prosecute their said appeal to effect, and answer all costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

(S'g'd) ADAM LENHARDT. [SEAL.]
" EMILE KOWER. [SEAL.]

Signed, sealed, and delivered in the presence of, and also acknowledged before, me this 16th Nov., A. D. 1872.

JOS. F. O'BEIRNE,
U. S. Comm., &c.

215 UNITED STATES OF AMERICA,
District of California, ss:

Adam Lenhardt and Emile Kower, being severally duly sworn, each for himself, deposes and says that he is a householder and freeholder, and resident in said district, and is worth the sum of five hundred dol-

lars over and above his just debts and liabilities, exclusive of property exempt from execution.

(S'g'd) ADAM LENHARDT.
" EMILE KOWER.

Subscribed and sworn to before me this 16th day of November, A. D. 1872.

JOS. F. O'BEIRNE,
U. S. Commissioner Dist. of California.

(Endorsed:)

I approve the form of the within undertaking, and the sufficiency of the sureties thereon.

San Francisco, Nov. 22, A. D. 1872.

LORENZO SAWYER,
Circuit Judge.

Filed 22 November, 1872. L. S. B. Sawyer, clerk.

217 UNITED STATES OF AMERICA,
District of California, ss:

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States of the ninth judicial circuit, in and for the district of California, do hereby certify that the foregoing two hundred and fifteen written pages, numbered from 1 to 215, both inclusive, contain a full and true copy of the record and of all the proceedings in the cause therein entitled.

Witness my hand and the seal of said circuit court this 28th day of January, A. D. 1873.

[SEAL.] L. S. B. SAWYER, *Clerk.*

(Indorsement on cover:) No. 422. John Kieley and Mary Kieley, his wife, George Wilson and Ann Wilson, his wife, and Ellen Lynch, appellants, vs. John A. McGlynn et al. California C. C. U. S. Filed 7th April, 1873.

No.....

In the Supreme Court

OF THE UNITED STATES.

JOHN KIELEY and MARY ANN KIELEY his wife, ELLEN LYNCH and ANN WILSON,

Appellants,

vs.

JOHN A. MCGLYNN, *et al.*

Respondents

BRIEF OF APPELLANTS.

This is an appeal from the Circuit Court of the United States for the District of California.

It was heard in the court below, upon demurrers filed by several of the defendants, to the complainants bill of complaint, as amended, and a decree was entered dismissing the bill.

There is no written opinion, and we are therefore unable to say what was the precise view taken of the case, by the court below.

The demurrers are, for the most part, general, though some of them specify the statute of limitations of the State of California.

The facts as set forth in the bill are as follows:

David C. Broderick, then a senator of the United States for the State of California, died intestate on the 16th day of September 1859, seized in his *demesne* as of fee, of divers parcels of real estate, situate in California, leaving himself surviving—his only next of kin and heirs at law—the complainants in this action, who thereby became seized of, and entitled to the possession of said estate.

That the defendants afterward at the City of New York, under the false date of January 2d, 1859, for the purpose of divesting the complainants of that title, and obtaining for themselves possession and apparent title to these lands, procured a paper to be drawn, in the form of a will, the name of Broderick to be forged thereto, the instrument to be attested with the required statutory solemnities, and in the absence and without the knowledge of the complainants, presented it for probate before the Probate Court of San Francisco, procured the requisite perjury to give it seeming verity, obtained a decree of that court admitting it to probate, and letters testamentory to be issued, according to the tenor of the simulated will.

Under the forms of these proceedings, the defendants have obtained every formal requisite to establish a perfect legal title to the lands in question, and are now enjoying these lands under all the protection that law can give to right.

They now present themselves before the Equity of the highest national judicature, and defy its power to right a wrong like that.

The question now presented, is: Has the Court below the power to strip that paper of the admittedly false

quality with which the defendants have procured it to be clothed, by the Probate Court of San Francisco.

A paper was presensed to the Probate Court, having (so the demurers admit) nothing but *form*—a thing without life, strength, force or power. That Court is induced, by frauds and perjuries, to invest that "form" with life—a life not inherent in itself, not derived from Broderick, but borrowed—wholly borrowed, from the sovereignty from which that Court derives its being and its powers. The Probote Court, not Broderick, gave birth to that will. That Probate Court, and not Broderick, exercised the testamentary power necessary to the creation of that instrument.

We are here to question the testamentary capacity of that tribunal.

The Equity jurisdiction of the Court below, is as broad as that which is exercised by any tribunal in this country or in any country in the civilized world.

It will not be suggested that the complainants have mistaken their remedy—that the action should have been an action at law.

The complainants' remedy must be in a Court of Equity, or they are remediless.

Had the frauds in question been perpetrated upon an individual, with the same results, the jurisdiction of the Court below, invoked for relief, would not have been questioned. But as that individual was a county officer, clothed with the limited functions of a Judge of Probate, his exercise of these functions cannot be questioned in a Court of Equity. This is supposed to be the principle upon which the decree appealed from is bottomed.

POINTS.

First.—It is one of the principal functions of a Court of Equity to relieve from judgments and decrees that have been obtained by fraud or mistake.

1 Story's Eq, Jurisp., § 252 citing: 1 Madd., etc. Pr. 236, 237; Com. Dig. Chancery, 3 M. 1. 3 N. I. 3 W. Davenport v. Stafford, 8 Beavan's, R. 503.
Langley v. Fisher, 9 Beavan's, R. 90.
Dobson v. Pearce, 12 N. Y., Reps. 156.
Reigal v. Wood, 1 J. C. R., 402.
McDonald v. Neilson, 2 Cow., R. 139.
Duncan v. Lyon, 3 J. C. R. 351.
Marine Ins. Co. v. Hodgson, 6 Cranch, 206.
Shottenkirk v. Wheeler, 3 J. C. R., 275.
Smith v. McIver, 9 Wheat, 532; Story's Con. of Laws, § 609; Taylor v. Bryden, 8 J. R., 173; Bamerly v. Powel, 1 Ves. 120, 284, 289; 2 Bibb's R. 4: 6 Porter's R. 24; 7 Porter's R. 549; 1 Breeze, 147; Coke's R. 242; 4 Randolph R. 537; 2 Stewart's R. 515; 3 Haywood's R. 1, 11, 88, 210, 219, 305; 7 Ohio, N. 211; 8 Gill v. Johnson, 170; 2 *deb*, 21, 2 Story's R. 59 and 587.

SECOND.—There is no sound reason in the nature of things, nor yet is there any arbitrary rule of law that exempts decrees of Probate Courts from the jurisdiction which Courts of Equity uniformly exercise over other decrees and judgments.

1.—The probate of a will obtained by fraud will, in England, be relieved against in chancery.

3 Atkyns, 359; 1 Chan. Rep., 13, 66; 1 Vernon, 296; Prec in Chan., 3, 123; 1 P. Wms., 287, 731; 2 Vernon, 700; 1 Bro. Par. Ca., 250; 3 Id., 550; 4 You & C., 358; where it is said

that "the cases of Kerrick vs. Bransby, 7 Bro. P. C., 437, and Andrews vs. Poweys, 2 Bro. P. C., 504, are no authorities for the proposition,—that a Court of Equity has no jurisdiction to try the validity of a will of real or personal estate."

2.—Courts of Equity in this country do not appear to have hesitated to interfere, in cases of fraud, with decrees and proceedings in Probate and Surrogate's Courts, where such a question has been presented.

Pratt vs. Northam, 5 Mason's R., 95, 3 Cranch, 307 ; 1 Wheat, 447 ; Gould vs. Gould, 3 Story, 536-7 ; Gains vs. Chew, et. al., 2 How., 619 ; Payne vs. Hook, 7 Wall, 425 ; 17 Louis R. 14–16.

Even in cases where an issue *devisavit vel non*, is sent to a court of law for trial, equity takes jurisdiction and retains the case to grant relief, according to the event of the issue.

Storey's Eq. Jurisp. S. 440, § 184, note 1.

It seems that the only reason why any doubt ever existed as to whether Courts of Equity could interpose and relieve against fraud, practised in obtaining a will or procurring the probate of a will, is that a will of personal estate may be set aside, for fraud, in the Ecclesiastical Court, and a will of real estate may be set aside, for the same reason, in a Court of law. Note 1 to § 184, Storey's Eq. Jursp. Gains vs. Chew, et. al. 2 Howard 645-6.

In Tarver vs. Tarver, et. al., 9 Pet. 174, this court refused to sustain a bill to set aside the probate of a will, for the sole and avowed reason

that the party had mistaken his remedy—it being "by appeal from the Court of Probate according to the laws of Alabama." Thereby in effect asserting that if the party had no remedy in that court, under those laws, this court would have entertained jurisdiction. But neither the Probate Court nor a court of law can exercise any jurisdiction in a case like this.

Stale vs. McGlynn, 20 Cal. R., 233.

Although the complainants are, under this decision, remediless in the State of California, it by no means follows that the Federal Court is equally powerless. Were this so, the constitutional provision giving a citizen of another State the right to resort to the Federal Courts, rather than submit to the jurisdiction of the State Court, would be the sheerest mockery.

If the ground for such an arbitrary and reasonless rule, be that exclusive jurisdiction over the probate of wills is given to another tribunal, then courts of equity should not interfere with judgments obtained by fraud in Courts of law, for Courts of law have (in many cases) jurisdiction equally exclusive.

3.—But in the case now before the Court, no question as to the validity of the will is presented, for it stands admitted that Broderick died intestate.

4.—It is not a will, but certain proceedings in a Probate Court, that present a bar to an action in ejectment for the recovery of the land in question. The question here presented, is—has a Court of Equity power to remove a bar, created by frauds imposed by the defendants upon a Probate Court, to the recovery of lands of which

the complainants have undisputed title? For when the defendants admit that Broderick died intestate, and that the complainants are his heirs at law, they admit that the title to the lands, of which he died seized, are the property, in law and equity, of the complainants; and they cannot, in the same record in which they make this admission, be heard to deny or question that title.

5.—The Statutes of California cannot be invoked to deprive the Federal Courts of one whit of the jurisdiction which has been conferred upon them by the Constitution and the Acts of Congress that are in conformity therewith.

Payne v. Hook, 7 Wall, 425; 20 How. 175; 14 Pet. 67; 18 How. 503.

THIRD.—But were the case different, and had there been a will—however voidable— in existence, which had by fraud been admitted to probate, and it were a sound principle, that a Court of Equity will no entertain jurisdiction for the purpose of avoiding the probate of such a will, it would then follow that the complainants would have the right to go back into the Probate Court of San Francisco, and by appeal or otherwise seek to avoid the probate.

In that case the complainants would be entitled to full and explicit answers, from the defendants, in regard to all the matters whereof the defendants are interrogated in the bill of complaint, which answers would be evidence before the Probate Court, in proceedings to avoid the will in question.

This Court will aid the complainants, in obtaining proof to sustain a formal application to the Probate

Court, for the revocation of the will—especially when, as in this case, the essential facts are within the knowledge of the defendants.

Gaines v. Chew, *et al.*, 2 How., 646, 649.

Circumstances may arise in this part of the case, which will require a more definite and efficient action by the Court below; and if the probate Court refuse to take jurisdiction, from defect of power to bring the parties before it, lapse of time, or on any other ground, and there be no remedy in the higher Courts of the State, it may become the duty of Circuit Court, having the parties before it, to require them to go before the Court of Probate, and consent to the revocation of the will.

Gaines v. Chew, *et al* 2 How, 646, 647.

In Burnsley v. Powell, 1 Ves. Sr. 119, 284, 287, Lord Hardwick decreed that the defendant should consent, in the Ecclesiastical Court, to the revocation of the will in controversy, and the granting of administration.

FOURTH.—If the complainants are remediless in a court of law, and in the Probate Court, this Court, sitting in Equity, will grant the relief that the case may require.

In every case where the Equity Courts of this Country or Court of Chancery in England, have refused to entertain jurisdiction, it was for the assigned reason that some other Court had ample jurisdiction.

It is clear in this case that no other jurisdiction can grant the requisite relief.

1.—It is here claimed that the other defendants had notice of the frauds committed by the defendants in proving the will, and took their titles respectively, with that knowledge, and are now holding the property in trust for the complainants.

Under these circumstances a suit at law could give no adequate satisfaction.

2.—A surrender of papers and a relinquishment of title may be necessary. The powers of a Court of Equity are clearly required to do complete justice between the parties.

When one man possesses himself wrongfully and fraudulently of the property of another, in equity, he holds such property in trust for the rightful owner.

Gaines vs. Chew, *et al*, 2 How., 650.

FIFTH.—But when there is reasonable doubt as to whether the party may have full relief in a court of law, or if a more complete remedy can be had in equity, the Equity Court will retain its jurisdiction.

Bicknell vs. Todd, 3 McLane, 236; Boyce vs. Grundy, 3 Pet., 210; Wylie vs. Cox, 15 How. 416; Barber vs. Barber, 21 How., 582; Payne vs. Hook, 7 Wall, 430.

SIXTH.—The action is not barred by the statue of limitations of the State of California.

1.—The statutes of limitations do not absolutely bind Courts of Equity. They adopt them only as a rule to assist their discretion.

Brooksbank vs. Smith, 2 Younge & Coll, 58; Storey's Eq. Jurisp. § 1,520, and cases there cited.

2.—Courts of Equity interfere, in many cases, to prevent the bar of statutes of limitation, when it would be inequitable or unjust.

Story's Eq. Jurisp., § 1521, and cases there cited.

3.—It is only in cases in which the remedy is concurrent in law and equity, that the statute of limitations is ever said to be of binding force upon Courts of Equity.

Spoor vs. Wells, 3 Barb. Ch. R., 199; Wood vs. Wood, 3 Ala. R., 756; State of Rhode Island vs. the State of Massachusetts, 15 Pet., 233; Pratt vs. Northam, 5 Mason, 112; Humbert vs. The Rector, &c., of Trinity Church, 26 Wend., 587; 10 Yerger's R., 350, 8 id. 238, 7 id. 1.

4.—In cases of fraud, the statute does not begin to run until after the discovery of the fraud.

Story's Eq. Jurisp., § 1521 a, and cases there cited; 1 Hill 121; 6 Yerger, 60; Cook's R., 185; 1 J. J. Marsh, 401-77; 3 Desaw, 223, 4 id. 474; 1 McCord's Ch. Reps., 314; 3 Monroe, 40; 3 Leigh, 729; 10 Yerger, 94; 4 Dand. 226; 4 Blackf. 77.

5.—Whatever be the language of the Statute of Limitations of the State of California, this Court will adhere to the principles, powers and jurisdiction it derives from the Constitution, which are commensurate with those exercised by the English High Court of Chancery at the time of the adoption of the Constitution, and

will hold the same uniform rule in all the Courts of the United States, in what State soever they may be sitting.

23 How., 90; 3 Wheat, 211; 4 Wheat, 108; 5 Mason, 95.

SEVENTH.—But if the weight of authority be against the exercise of Equity jurisdiction over the execution or probate of a will, to set it aside for fraud or imposition, the maxim that where there is a wrong there is a remedy, will assert its prerogative, and as more than hinted in the case of Gaines v. Chew, *et al*, this Court will gravely consider whether the inherent powers of a Court of Chancery may not afford a remedy where the wrong is so great, and the right so clear as in the present case.

EIGHTH.—The decision of the Circuit Court should be reversed, and this cause remanded to that Court, with instructions, &c,

ISAIAH T. WILLIAMS,

Of Counsel for Appellants.

No......

IN THE SUPREME COURT

OF THE

UNITED STATES.

JOHN KIELEY, and
MARY KIELEY, his wife,
ELLEN LYNCH and
ANN WILSON,

Appellants,

vs.

JOHN A. McGLYNN *et al.*,

Respondents.

Brief on the part of Appellants.

STEPHEN H. PHILLIPS,
Of Counsel for Appellants.

SAN FRANCISCO:
WOMEN'S CO-OPERATIVE PRINTING UNION,
424 Montgomery Street, bet. Sacramento and California,
1874.

IN THE SUPREME COURT

OF THE

UNITED STATES.

JOHN KIELEY and
MARY KIELEY, His Wife,
ELLEN LYNCH and
ANN WILSON,
Appellants,

vs.

JOHN A. McGLYNN *et al.*,
Respondents.

Brief on the Part of the Appellants.

By filing a general demurrer, the respondents admit, for the purposes of this argument, that:

First. David C. Broderick died in September, A. D. one thousand eight hundred and fifty-nine, being then a citizen of the United States, resident at San Francisco, and having a legal domicil in the State of California, and that the com-

plainants, Mary Kieley, Ann Wilson and Mary Lynch, all aliens and married women, were his heirs-at-law, being his cousins germain and daughters of his father's sister.

Second. That David C. Broderick was seized at his decease of the real and personal property detailed in the schedule.

Third. That on or about February 20th, 1860, the defendant McGlynn presented for probate a certain instrument, purporting to be the last will and testament of said Broderick, in which said McGlynn, together with A. J. Butler and George Wilkes, were named executors.

Fourth. That said instrument was a forged and spurious paper, and not what it purported to be.

Fifth. That said instrument was successfully imposed upon the Probate Court of San Francisco as a genuine document, and that, by a series of frauds in which all of the executors partook, or for which all and each of them are responsible, they obtained a probate of the same, and the same was actually admitted to probate by the Probate Court of the City and County of San Francisco, on the 8th day of October, 1860, and afterwards, viz: on the the Probate Court aforesaid, on the petition of But-

ler and McGlynn, ordered a sale of $80,000 worth of real estate, and the sale was made and the property purchased by various persons with full knowledge of the frauds, and that all who are proceeded against, as in possession of the property, had actual and complete notice of all the frauds.

Sixth. That no one of the heirs-at-law of D. C. Broderick had any knowledge of his death or of any probate proceedings until December 31st, 1866, upon which they immediately began to assert their rights, and have diligently striven to do so ever since. That these married women, at the time of receiving such notice, were poor and illiterate, residing in the colony of Queensland, Australia, more than 1000 miles from Sydney, where professional advice was not accessible, yet, nevertheless, they exerted themselves, and got this bill filed in San Francisco, within a year after discovering the facts.

It is painful to believe that such wrongs are remediless, and it is hoped that these defrauded heirs have not mistaken their remedy; the present Bill has been brought by unprotected alien females, at the earliest opportunity, to compel those men who have imposed upon the Probate Courts of California to hold the property unlawfully acquired, in trust for the benefit of the

real owners. The general doctrine is, that fraud vitiates the most solemn proceedings of Courts of Justice; collusion being a matter extrinsic of the cause, may be imputed by a stranger and tried by a jury and determined by the Courts of temporal jurisdiction.

Duchess of Kingston case, 20 Howell's St. Trials.

Stoddard *vs.* Chambers, 2 How. S. C., 318.

Munroe *vs.* Worrel, 16 Barb., 228.

Cone *vs.* Griffin, 21 Barb., 9.

Harwood *vs.* Railroad Companies, 17 Wallace, 78.

The question is, whether the Circuit Court of the United States, within and for the District of California, on the day of filing this Bill of Complaint, had competent jurisdiction, as a Court of Chancery, to hear and determine such a case as is therein set forth.

Jurisdiction of the United States in Chancery depends (1) upon the parties, (2) upon the acts complained of, (3) upon the relief sought.

Upon each of these grounds it is affirmed that the bill states a perfect case for equitable interference, and that there are no circumstances disclosed in the bill sufficient to defeat the jurisdiction.

Chancery jurisdiction in the Federal Courts is

conferred by the United States Constitution, Art. 3, §2, and by the Act of 1792. It has been authoritatively determined and declared by this Court that this jurisdiction is much ampler than that of the same Courts at common law, that it does not depend upon State systems, but is, in fact, as broad as the chancery jurisdiction of Great Britian at the time of the legislative enactment.

Robinson *vs.* Campbell, 3 Wheat., 212.
Pease *vs.* Peck, 18 How. S. C., 598.
Russell *vs.* Wood, 1 John. Ch., 406.
Wright *vs.* Miller, 1 Sandf. Ch., 103.
Irvine *vs.* Marshall, 20 How. S. C., 566.

"The remedies in the Courts of the United States are to be at common law or in equity, not according to the practice of the State Courts, but according to the principles of common law and equity, as distinguished and defined in that country from which we derive our knowledge of these principles."

Steamboat Orleans *vs.* Phœbus, 11 Peters, 183.

"The local laws of a State can never confer jurisdiction in the Courts of the United States. They can only furnish rules to ascertain the rights of parties; and thus assist in the administration of proper remedies where the jurisdiction is

vested by the laws of the United States." Circuit Courts of the United States question jurisdiction of State Courts, when proceedings of State Courts are collaterally brought before it.

Elliot *vs.* Peirsol, 1 Pet., 240.

United States *vs.* Arredonde, 6 Pet., 691.

Delassus *vs.* United States, 9 Pet., 117.

Strother *vs.* Lucas, 12 Pet , 410.

This being so, the jurisdiction of the Circuit Court was ample, by reason of the parties, the subject-matter and the relief sought.

1. The Court had jurisdiction of the parties.

The complainants are alien, and have a constitutional right to bring a bill in the Federal Courts. Const. U. S., Art. 3, § 2.

Incidentally to this, may be considered the right of aliens, under the laws of California, to inherit and hold real estate. This right was given in express terms by the Statute of April 19th, 1856, which was in force at the time of D. C. Broderick's death.

Hittell's Gen. Laws, 1 § 2606.

II. The Court had jurisdiction of the subject-matter.

The acts complained of are frauds, eminently fit subjects for equity jurisdiction.

Marble *vs.* Steele, 2 Black., 353.

Breckenridge *vs.* Holland, 2 Black., 377.

Cherry & Bell *vs.* Belcher, 5 Stewart & Porter. 133.

Rhoades *vs.* Selin, 4 Wash. C. C., 716.

Gayle *vs.* Singleton, 1 Stewart (Ala.) 566, 575.

Dobbs *vs.* Distributees of Cockerham, 2 Porter (Ala.) 328.

The jurisdiction would hardly be questioned, if it did not appear to involve the reversing of probate decrees, which, by a somewhat anamolous exception, are generally held sacred in chancery, and strong cases may be found to support such a position. Were this a proceeding calling for nothing but a reversal of a decree of a Court of Probate, this Court might hesitate to interfere; but the bill prays also for a discovery that the pretended will may be declared a forgery, and that all the orders in Probate Court be treated as ineffectual to protect any of the defendants cognizant of the frauds, and that they be decreed to hold as trustees, and for general relief.

Penn *vs.* Lord Baltimore, 1 Ves., 453.

There is great difficulty about allowing a Court, not expressly invested with a supervisory authority, to order the mutilation of the records of an independent tribunal or official registrars.

Bruce *vs.* Bonney, 12 Gray, 107.

But the Court may expressly order parties,

who are inequitably and unconscionably attempting to take advantage of a fraud or mistake, to desist from doing so, and it may compel them, under pain of contumacy, to do anything or appear anywhere, or assume any character, or acquiesce in any proceeding, in order to repair the wrong which has been accidentally or intentionally done.

Bruce *vs.* Bonney, 12 Gray, 107.

This view of equity jurisdiction illustrates a distinction enforced in two leading cases, between fraud in obtaining the execution of a will and fraud in obtaining a probate thereof.

Barnsley *vs.* Powell, 1 Ves., Sr., 119.

Meadows *vs.* Duchess of Kingston, Amb., 762.

Boyce *vs.* Rossborough, 6 H. of Lords cases, 40.

Bennett *vs.* Vade, 2 Atkyns, 324.

And Courts of Equity have never hesitated to relieve in cases of fraud in the settlement of probate accounts.

Gould *vs.* Gould, 3 Story, 516.

Pratt *vs.* Northam, 5 Mason, 95.

Atkins *vs.* Kellman, 20 Wend., 246.

Pemberton *vs.* Pemberton, 13 Ves., 298.

But the whole matter has been carefully reviewed and considered by this Court in a case of

great importance, and where, perhaps, there were reasons of more than ordinary moment for shrinking from any interference with independent Probate Courts. In the familiar case of

Gaines *et ux. vs.* Chew *et al.*, 2 How. S. C., 646;

this Court said, "In order that the complainants may have the means of making, if they shall see fit, a formal application to the Probate Court for the proof of the last will, and the revocation of the first having the answers of the executors, jurisdiction as to this matter may be sustained. And, indeed, circumstances may arise, on this part of the case, which shall require a more definite and efficient action by the Circuit Court. For, if the Probate Court shall refuse to take jurisdiction from a defect of power to bring the parties before it, lapse of time, or on any other ground, and there shall be no remedy in the higher Courts of the State, it may become the duty of the Circuit Court, having the parties before it, to require them to go before the Court of Probate and consent to the proof of the will of 1813, and the revocation of that of 1811. And should this procedure fail to procure the requisite action on both wills, it will be a matter for grave consideration, whether the inherent powers of a Court of Chancery may not afford a remedy, where the right is clear, by establishing the will of 1813."

The suggestions of this case are a sufficient answer to any suggestion that this case has been substantially decided the other way by the State Courts of California in

State *vs.* McGlynn, 20 Cal., 233.

It is for the precise reason that the State Courts of California have shrunk from awarding a full measure of justice, that these complainants in the exercise of their constitutional rights, have preferred to prosecute their claims in a federal forum, and to rely upon the authoritative exposition of the law in

Gaines *et ux. vs.* Chew *et al*

Neither can it be said that there is any adequate remedy at law, or in any other Court, or by any other course of proceeding. Everything has been done which could be done by the Legislature and Executive of California, to secure a trial of the question in controversy upon its merits, and inasmuch as all their efforts have been futile, these unfortunate women have appealed to this Court for simple justice.

III. This Court can alone afford adequate relief, and this is a sufficient reason for interposing its jurisdiction.

It is a peculiar prerogative of a Court of Chancery to compel discovery. That peculiar

form of relief has been sought for in this case, and it is the special relief indicated in

Gaines *et ux. vs.* Chew *et al.*

It is also familiar law that when jurisdiction attaches for discovery it is retained for all purposes.

This has been emphatically declared to be the rule of this Court.

Russell *vs.* Clark's Exrs., 7 Cranch, 89.

But the various other modes of relief peculiar to equity are indispensable. It is competent under the prayer for general relief to enjoin the defendants against taking advantage in any way of this fraud upon the Probate Court.

Bruce *vs.* Bonney, 12 Gray.

They should also be declared trustees of the property (by them wrongfully possessed) for the benefit of the heirs-at-law. This is a clear case of trust *ex maleficio*. In all such cases "Equity turns the fraudulent procurer of a legal title into a trustee in order to get at him." By Gibson, C. J. in Hoge *vs.* Hoge, 1 Watts, 214.

Illustrations of this jurisdiction.

Smith *vs.* Burnham, 3 Sumner, C. C. 462.
Williams *vs.* Brown, 14 Illinois, 202, 203.
McEldery *vs.* Shipley, 2 Maryland, 25.
Irvine *vs.* Marshall, 20 How. S. C., 565, 566.
Wilson *vs.* Castro, 31 Cal., 436, 437.

And, finally, they should be required to go before the Court of Probate and consent to an alteration of its decrees, and to a distinct adjudication that D. C. Broderick died intestate, and that these complainants are entitled, as heirs at-law and distributees of his real and personal estate.

The precise contingency apprehended by this Court in *Gaines et ux.* vs. *Chew et al.* has occurred, and (as the Court observed in that case) should this procedure fail to procure the requisite action * * * it will be a matter for grave consideration whether the inherent powers of a Court of Chancery may not afford a remedy where the right is clear, by establishing the intestacy of Broderick and enforcing every right incident thereto.

In answer to what may be suggested in defense, it may be replied that (1) there is no adequate remedy at law; (2) there is no bar by the Statute of Limitations; (3) the question of alienage.

I. There is no adequate remedy at law.

It is too late to ask the Probate Court to revise its proceedings.

State *vs.* McGlynn, 20 Cal.

And, otherwise, the Court could only revoke

the probate of the will—it could not correct the irregular sales by executors.

Gayle *vs.* Singleton, 1 Stew., 515.

Equitable interference is indispensable on account of great number of parties. The defendants and claimants are numerous. Different rights and equities require the interposition of a Court of Equity.

Burns *vs.* Jackson, 1 Y. & C., 585.

The remedy at law must be as practicable, efficient and prompt as that in equity, to oust Chancery jurisdiction.

Boyce Ex'r. *vs.* Grundy, 3 Pet., 210.

U. S. *vs.* Myers. 2 Brock., 525.

Smith *vs.* McIver, 9 Wheat., 532.

II. This proceeding is not barred by any effectual limitation.

The Federal Courts will not recognize the California Statute of Limitations as operating, *proprio vigore*, upon equitable actions at their bar.

Michoud *vs.* Girod, 4 How. S. C., 503.

Especially should Federal Courts act independently of local statutes of limitations when rights of aliens are effected.

The Legislature of California in not excepting from the force of its Statute of Limitations aliens beyond seas is very peculiar. The cause of ac-

tion in fraud does not accrue till the fraud is discovered.

Mayne *vs.* Griswold, 3 Sand., 463.
Elwood *vs.* Diefendorf, 5 Barb., 411.
Hovenden *vs.* Lord Armesley, 1 Sch. & L., 634.
Bond *vs.* Hopkins, 1 Id., 418-31.
Blennerhasset *vs.* Day, 2 Ball & Beatty, 129.
Murray *vs.* Coster, 20 Johns., 583.
2 Story Eq., 582-583.
Boyd *vs.* Blankman, 29 Cal., 19.
Stewart *vs.* Thompson, 32 Cal., 260.
Sublett *vs.* Tinney, 9 Cal., 423.
Angell on Limitations, 188.
Code of Civil Procedure, §338, P. 4.
Cal. Stat. of Lim. 1850, 1, p. 452.
Hittell's Dig., §4359, §17.
Cuney *vs.* Allen, 34 Cal., 257.
Kane *vs.* Bloodgood, 7 Johns. Ch., 90.

STEPHEN H. PHILLIPS,
Of Counsel for Appellants.

Supreme Court of the United States.

JOHN KIELEY AND MARY KIELEY, *et al.*,

APPELLANTS.

vs.

JOHN A. McGLYNN, *et als.*,

RESPONDENTS.

Supplemental Points.

The statute of the State of California, approved March 3, 1862, is not confined in its application to escheated estates.

Wilmot *vs.* Rose, 3 Elles & Blackburn, 563.

The relief provided for in the 4th section of the act is in its nature equitable relief. It is conferred upon that court which has the only original equity jurisdiction in the State, and was intended to relieve against all such as present themselves in this, and similar cases, to settle a disputed point of law, and settle it finally.

An alien or a citizen of another State suing in the Federal courts has a right to all the benefits that could result from that act to a citizen of California, suing in the district court, or else the constitutional provision giving him a right to sue in the Federal courts would be a delusion and a snare.

Section 2, article IV, of the Constitution provides that—

"The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

Under the 5th subdivision of the second point upon the brief add the following authorities:

Riggs *vs.* Johnson County, 6 Wall., 166.
Supervisers *vs.* Rogers, 7 Wall., 175.
Lee County *vs.* Rogers, 7 Wall., 181.
Gilpeck *vs.* The City of Dubuque, 1 Wall., 176, 223.

The right of action in this case did not accrue until the discovery, by the appellants, of the fraud complained of. It is not barred by the statute of limitations of the State of California.

See citations in Mr. Phillips' brief, page 14.

ISAIAH T. WILLIAMS,
Of Counsel for Appellants.

IN THE

Supreme Court of the United States.

JOHN KIELEY AND OTHERS, *Appellants*,
vs.
JOHN A. MCGLYNN AND OTHERS, *Appellees*.
No. ——

Supplemental Points.

This bill, as a bill of discovery, is not good. It avers no suit pending or about to be brought which the discovery is to aid. This is an essential to the bill.

Story Eq. Pl., sec. 319 to 321, p. 377, (5th ed.)
Ib., sec. 560.

If the court in which the action is pending, (to aid which the discovery is sought,) or where it is about to be brought, can itself compel a discovery, a bill for that purpose will not lie.

Story Eq. Pl., 555, (5th ed.)

This principle was applied in the *Ecclesiastical Court*.

See Ib. and cases cited in note.
See, also, Dunn vs. Coats, 1 Atk. R., 288–9.
Gelston vs. Hoyt, 1 J. C. R., 547.

The Probate Court has ample power on this subject to examine all parties and others on oath.

"So, if a bill of discovery in aid of an action at law discloses the fact that such action is barred by the statute of limitations, a demurrer will be allowed."

Story Eq. Pl., p. 581, sec. 557 *a*, (5th ed.)
Id., sec. 558–9.
Wallis vs. Duke of Portland, 3 Ves., 493, 503.
Cooper's Eq. Pl., 194–5.

In general, if it appear that the action intended to be aided by the discovery is one which cannot be maintained, a demurrer to the bill of discovery is good.

Id., *passim*.

These defendants not being the guilty parties, could only answer if they had *notice of the forgery*. If it be true that they are protected under the orders of the court, whether they knew or not, then the bill as a bill of discovery is bad.

The defendants here are not charged with any concealment or personal acts, and they have nothing to discover. They are a community—some seven or eight hundred persons—and corporations public and private. The bill is utterly destitute of any merit as a bill of discovery.

S. M. WILSON,
Of Counsel for Appellees.

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IN THE

Supreme Court of the United States.

JOHN KIELEY & OTHERS, Appellants,

vs.

JOHN A. McGLYNN & OTHERS, Appellees.

Brief on the part of the Appellees.

S. M. WILSON,

Solicitor and Counsel for Appellees.

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IN THE

Supreme Court of the United States.

JOHN KIELEY AND OTHERS, *Appellants*,
vs.
JOHN A. MCGLYNN AND OTHERS, *Appellees*. } No.——

Brief on the part of the Appellees.

STATEMENT OF THE CASE.

This is a suit in equity commenced in the Circuit Court of the United States for the District of California. Separate demurrers, general and special, were interposed in the court below to the amended bill of complaint, and were sustained. The complainants making no further amendments, a final decree was entered on the demurrer, and from that decree the present appeal is prosecuted.

The bill alleges, in substance, that David C. Broderick (formerly United States Senator from California) died on the 16th day of September, 1859, seized in fee of a large amount of real estate in the City of San Francisco, and also owning some personalty, schedules of which are annexed to the bill of complaint; that after his death a paper writing was presented to the Probate Court of the City and County of San Francisco, pur-

porting to be his last will and testament; that the subscribing witnesses were duly examined, as well as other witnesses, as to its genuineness, and the will duly and formally admitted to probate; that letters testamentary were thereupon duly issued to Andrew J. Butler (since deceased) and John A. McGlynn; that claims against the estate to the amount of about $80,000 were allowed by the executors and approved by the probate judge; that under the orders of the probate court the property was all sold to pay the debts and expenses of administration, and that all the present defendants (appellees) claim under those sales made under the order of the probate court, and are now in possession of those lands.

The bill then seeks to impeach the judgment and decree of the probate court admitting the will to probate, on the ground that the same was a forgery, and that the name of Mr. Broderick was signed thereto after his death by one Moses E. Flanagan; and that Butler, one of the executors, knew that the instrument was a forgery, and procured the evidence to maintain it.

The bill shows no distribution of any of the property to the devisees under the will, but on the contrary alleges that the entire estate was sold under the orders of the probate court, and that the defendants all claim under those sales. The residuary devisee, Wilkes, was not made a party because it is alleged that he has no interest.

The alleged crime was perpetrated, according to the bill, by one Phillips who wrote the will, one Flanagan who signed it, and Butler who procured it to be probated. None of these persons are parties to the suit. Not one of the defendants is alleged to have been connected

with the fraud; but it is simply alleged that each of the defendants or his grantor had notice at the time of the probate sale that the will was a forgery.

The bill nowhere alleges that the debts which were allowed and approved by the probate court were not just and valid debts against the estate; and the regularity of the orders of the court directing the sales are not in the least impugned; neither is it pretended that the defendants did not pay full and adequate prices for the property.

The real complainants are three females, (the two others being husbands of two of the females,) and they claim to be the only heirs of Mr. Broderick. His death occurred on the 16th September, 1859; (fol. 9;) the will was presented for probate on the 20th February, 1860; (fol. 11;) the will was admitted to probate on the 8th of October, 1860, and the order of sale was made the 7th November, 1861, (fol. 18.)

This bill was not filed until the 16th December, 1869, (fol. 25,) and the complainants seek to account for the delay in prosecuting their suit by alleging themselves to be foreigners and aliens, living in the interior of Australia; that they were ignorant and illiterate, and were even unable to read, and that they discovered the alleged fraud within three years before commencing the suit.—(Fols. 183 *et seq.*)

To the complaint, setting forth in substance the above facts, the defendants (appellees) severally interposed their demurrers, which, as before observed, were sustained by the circuit court.

The grounds relied on by the appellees are—

1st. That a court of equity has no jurisdiction of the subject-matter of this action, the same being vested ex-

clusively in the probate court of the city and county of San Francisco.

2nd. The action is barred by several statutes of limitation of the State of California, applicable to such cases.

3d. The defendants were all purchasers at a judicial sale, made under the orders of a court of competent jurisdiction, never reversed or set aside, and not now impeached by the bill of complaint.

4th. The complainants are non-resident foreigners, and therefore incapable of taking or holding property in California.

I.

Proceedings in probate of a will are *in rem*, of which the probate court has exclusive jurisdiction. Courts of equity can neither hear proof of a will nor establish it, nor set aside the proceedings in the probate court, probating wills.

In England this seems now to be beyond dispute, the ecclesiastical court occupying the place of the probate, surrogate, or orphans' court.

Archer vs. Mosse, 2 Vernon, 8.
Nelson vs. Oldfield, Ib., 76.
Jones vs. Jones, 3 Mer., 171.
Gingell vs. Horne, 9 Sim., 544–8–9.
Kenrick vs. Bransby, 3 Bro. P. C., 358.
Lyon vs. Bearer, 1 Turn. & Russ., 63.
Jones vs. Jones, 7 Price Ex., 663.
Jones vs. Frost, Jacobs' R., 466.
Pemberton vs. Pemberton, 13 Ves., 246.
Allen vs. Dundas, 3 D. & E., 131.

Duchess of Kingston's case, 2 Amb., 756.
Noel vs. Wells, 1 Lev., 235.
Webb vs. Cleverden, 2 Atk., 424.

In Jones vs. Jones, 3 Mer., 171, Sir Wm. Grant, Master of the Rolls, says: "It is impossible that at this time of day, it can be made a serious question whether it lie in this court [the high court of chancery] that the validity of a will, either of real or personal estate, is to be determined."

A demurrer to a bill quite similar to this was sustained.

In the United States the cases are equally strong to the same effect, as well in the federal as the state courts.

See Tarver vs. Tarver, 9 Pet., 174.
Fouverne et al. vs. New Orleans, 18 How., 471.
Thompkins vs. Thompkins, 1 Story, 547.
Langdon vs. Goddard, 2 Ib., 276.
Adams vs. DeCook, 1 McAll., 258.
Dorland et al. vs. Harrington's heirs, 29 Ala., 95.
Bogardus vs. Clark, 4 Paige, 625.
Woodruff vs. Taylor, 20 Vermt., 65.
Ballou vs. Hudson, 13 Grattan, 682.
1 Jarman on Wills, 213 and notes.
1 Story Eq. Juris., p. 429, sec. 490.
Joseph Hunter's Will, 6 Ohio R., 502.

The same point has been maintained and applied in California.

Castro vs. Richardson, 18 Cal., 478.
Adams vs. DeCook, 1 McAll., 258.
State of California vs. McGlynn, 20 Cal., 235.

The true principle is laid down in Dorland et al. vs. Harrington's Heirs, 29 Ala., 95, in the following words: "The probate of a will under any circumstances is a proceeding *in rem*. It operates upon *the thing* itself; it defines, and in a great degree creates, its status. The *status* thus defined adheres to it as a fixture; and the judgment or decree in the premises, unless avoided in some mode prescribed by law, binds and concludes the whole world."

Language identical in spirit, and almost identical in words, is found in—

Bogardus vs. Clark, 4 Paige, 625.
Woodruff vs. Taylor, 20 Vermont, 65.
Ballou vs. Hudson, 13 Grattan, 682.
State of California vs. McGlynn et al., 20 Cal. 271.

In fact the last case was a bill filed on behalf of the State of California, contesting the very will now before the court. The whole proceedings are set out in detail, showing that the will was duly contested in the probate court, and the very issue of genuineness or forgery presented; evidence in behalf of both parties offered and received, and that the probate court admitted the will to probate, finding the charges of fraud and forgery unsupported by the evidence. When the order of sale was made, the State, claiming that Mr. Broderick died intestate and without any heirs capable of inheriting, filed a bill to enjoin the sale.

Upon this, the very question was presented that is now presented: the State claiming there by escheat, and the alleged heirs claiming here by descent. But otherwise the scope of the bills is the same—an attempt

to set aside the probate of a will and to question its validity in a court of equity. The case here, however, is much stronger, for now the appellees are purchasers under the orders of the probate court, whilst in that case the sale had not been made.

That case was very elaborately argued and the decision of the court shows great learning and research. One of the justices of this honorable court was at that time the chief justice of the state, and will doubtless remember the case.

That case fully maintained the ground that a court of equity has no jurisdiction to question the validity or probate of a will; and to-day stands as the law of the state, having never been doubted or questioned.

The probate courts of the State of California are constitutional courts, (art. vi. Con. of Cal., sec. 7,) and the legislature has given them the principal powers of the ecclesiastical courts of England as to the estates of deceased persons, and even more, for real and personal property are on a common basis, and wills covering each must be probated. The executor or administrator has no power over either class of property that does not equally apply to the other.

See Beckett vs. Selover, 7 Cal. R., 215.

See Cunningham vs. Ashley, 45 Id., 485.

The powers of the probate court are fully adequate for all the purposes of the estates of deceased persons. There is a complete code on the subject.

See 2 Hitt. General Laws, sec. 5699, et seq.

Ample opportunity is offered to contest the validity of wills by the California system. Even after the regular probate and issuance of letters testamentary, it is subject to contest. The statute contains the following provision:

"Sec. 30. When a will has been admitted to probate, any person interested may, at any time within one year after such probate, contest the same or the validity of the will. For that purpose, he shall file in the court before which the will was proved a petition in writing containing his allegations against the validity of the will or against the sufficiency of the proof, and praying that the probate may be revoked."

Stat. 1851, p. 451.

2 Hitt. Gen'l Laws, sec. 5728.

The subsequent provisions prescribe the manner of conducting the contest, and sec. 33 provides as follow:

"If, upon the hearing of the proofs of the parties, the court shall decide that the will is for any reason invalid, or that it is not sufficiently proved to have been the last will of the testator, the probate shall be annulled and revoked."

Similar statutes and provisions prevail in most of the states.

There is nothing in our system, therefore, which requires the aid of a court of equity. The powers of the probate court are ample and its decision is open to review by the court of last resort in the state.

See State vs. McGlynn et al., *supra*.

II.

The appellants are barred by the lapse of time.

In California, the statute of limitations applies to equitable as well as legal actions.

Boyd vs. Blankman, 29 Cal., 19.

This will was admitted to probate on the 8th of October, 1860, and the bill was not filed until the 16th of December, 1869, a period of over nine years.

The action of ejectment is barred in five years; actions for relief on the ground of fraud are barred in three years; and after specifying different periods for different actions, the statute of California provides generally as follows:

"Sec. 19. An action for relief, not hereinbefore provided for, must be commenced within four years after the cause of action shall have accrued."

2 Hitt. Gen'l Laws Cal., sec. 4361.

If these general statutes be applicable, then the bar is complete; for though the complainants are married women, yet in the State of California that is not a disability in such a case as this, where *femmes covert* seek to recover their separate estate.

The statute provides as follows:

"Section 16. If the person entitled to commence any action for the recovery of real property, or for the recovery of the possession thereof, or to make any entry or defence founded on the title to real property or to rents

or services out of the same, be, at the time such title shall first descend or accrue, either—

First, Within the age of majority, or—

Second, Insane; or—

Third, Imprisoned on a criminal charge or in execution upon conviction of a criminal offence for a term less than life; or—

Fourth, *A married woman, and her husband be a necessary party with her in commencing such action or maintaining such defence*—the time during which such disability shall continue shall not be deemed any portion of the time in this act limited for the commencement of actions," etc., etc.

2 Hitt. Gen. Laws, 4358.

The general practice act of the state provides in respect to married women as follows:

"Section 7. When a married woman is a party her husband shall be joined with her, except that—

First, When the action concerns her separate property she may sue alone:

Second, When the action is between herself and husband, she may sue or be sued alone."

2 Hitt. Gen. Laws, sec. 4946.

The bill of complaint shows this to be the separate property of the wives, and brings the case within the following statute:

"Section 1. All property, both real and personal, of the wife, earned by her before marriage, and that acquired afterwards by gift, bequest, devise, or descent,

shall be her separate property; and all property earned by the husband," etc.

2 Hitt. Gen'l. Laws, sec. 3563.

Coverture, therefore, ceases to be a disability, and the female complainants become qualified actors, and are bound to the same diligence as other suitors.

See Wilson vs. Wilson, 36 Cal. R., 450.
Leonard vs. Townsend, 26 Ib., 442.
Caldernood vs. Peyser, 31 Ib., 333.
Corcoran vs. Doll, 32 Ib., 82.

So far this has been treated as an action to recover the property, and not for relief on the ground of fraud. In an analogous case the Supreme Court of California held that the clause of the statute of limitations referring to frauds "has no relation to an equitable proceeding to set aside a fraudulent deed of real estate when the effect of it is to restore the possession of the premises to the defrauded party. In such a case the action is substantially an action for the recovery of the real estate; indeed it is literally." The general statute was therefore held to apply.

City of Oakland vs. Carpentier, 13 Cal. R., 552.

The three years clause on the subject of frauds is put under the head of "actions other than those for the recovery of real property."

2 Hitt. Gen'l Laws, sec. 4359.

If this action be for the recovery of real property, it is therefore, barred; if, however, it be "founded on the title to real property," it is likewise barred.

2 Hitt. Gen. Laws, 4349.
Richardson vs. Williamson, 24 Cal. R., 301.

This action in no just sense can be regarded as an action for relief on the ground of fraud. The fraud and perjury are alleged to have been committed by other persons than the defendants. The only person ever in California charged with fraud was Butler, and he died before the suit was brought, and the sales under order of the probate court were made by McGlynn. No assault is made on the probate sales, and no impeachment of the debts to pay which the estate was sold. True, it is alleged that the purchasers had notice that the will was a forgery, but the probate court had decided that it was genuine and valid, and made the formal and proper orders for the sale to pay the debts. The purchasers do not claim under the will; their title by purchase at the probate sale does not come from the devisees, but directly from the ancestor, Broderick, and overreaches the title of the heirs and devisees.

Jackson vs. Robinson, 4 Wend. R., 443.

But even considering the action as based on the ground of fraud the bar of the statute should be held good. The bill alleges in substance that at the probate sale it was a *matter of public and general notoriety* that the said pretended last will and testament was not the will of said Broderick, but was a forged and simulated paper, and that the purchasers had notice of it.

Now, if it were so notorious that the purchasers were charged with notice, why not the heirs also? There was no concealment; the whole thing occurred in a court where the proceedings were openly conducted. Public notice of the proceeding *in rem* was given and all the world were parties. The heirs themselves had their day

in court. Not only were they thus called upon to appear and contest, if they so desired, but another year after probate, was allowed them to appear and object. It is no excuse, therefore, for them to say that they were in Australia and knew not of the proceedings. There was a *lis pendens*, and everybody had notice of it. As a proceeding *in rem* and the whole world were parties. The doctrine of the discovery of frauds does not apply to such a case. The statute of limitations must apply equally to a person in California and one in Australia. The statutes of limitations of California contain no exceptions in favor of persons *beyond the seas*, and the Supreme Court of California has decided against equitable exceptions to the statute.

See Tynan vs. Walker, 35 Cal. R., 639, and cases cited there.

The ignorance and want of education of the complainants can cut no figure here, for no advantage was taken of them, nor any deception practiced to keep them ignorant of their rights. "We cannot obliterate the recognized rules of law requiring of all persons the diligence and attention demanded of a prudent man in the transaction of his own business, and establish a measure of care and diligence for each particular case."

Boyd vs. Blankman, 29 Cal., p. 43.

But there are certain special statutes on the subject of probate proceedings to which attention is respectfully asked, as they seem to be of controlling power. Upon them alone the decree of the court below can be maintained.

Attention has already been called to the fact that the statute of California, on the subject of the probate of wills, is complete in itself, allowing one year, even after probate, within which parties interested may renew the contest and question the validity of the will or the probate. Section 36 of the same statute provides as follows:

"If no person shall, within one year after the probate, contest the same or the validity of a will, the probate of the will shall be conclusive, saving to infants, married women, and persons of unsound mind, a like period of one year after their respective disabilities are removed."

The year having expired, the probate of the will is *conclusive*. The disability of married women was removed in California by statute, as above shown.

The defendants here were purchasers under orders of the probate court. In view of the defects, irregularities, want of safety in the probate proceedings of a new state, having at first a transient population, the legislature provided for their protection as follows:

"Sec. 190. No action for the recovery of any estate sold by an executor or administrator, under the provisions of this chapter, shall be maintained by any heir or other person claiming under the deceased testator or intestate, unless it be commenced within three years next after the sale."

2 Hitt. General Law, 5888.

This section has been held by the Supreme Court of California to apply to cases of void administration and void sales.

Harlan vs. Peck, 33 Cal. R., 520.

Harlan vs. Miller, 34 Ib., 702.

It is, therefore, respectfully submitted that if the complainants ever had a cause of action against these defendants, it is now barred by the various statutes to which reference has been made.

III.

Relief cannot be granted against the defendants because they were purchasers at the probate sale, under orders of the court.

A proceeding to obtain a sale under order of the probate court "is in the nature of an action, of which the presentation of the petition is the commencement, and the order of sale is the judgment."

Sprague's Estate, 20 Cal. R., 121.

A purchaser at a judicial sale will hold the property even if the judgment or decree be reversed on appeal, (there being no supersedeas.) All that the purchaser has to do is to know that when he buys there is a valid judgment or decree authorizing a sale, and proper process to execute it. If there be, his title is good, notwithstanding the reversal.

Bank U. S. vs. Voorhies, 1 McLean, 221.
Blakeley vs. Calder, 15 N. Y. R., 617.
Buckmaster vs. Carlin, 3 Scam., 104.
Wood vs. Jackson, 8 Wend., 10.
Griffith vs. Bogert, 18 How. U. S. R., 164.
Manning's Case, 8 Coke, 192; Ib., 284.
Woodstock vs. Bennett, 1 Cow., 734.

It is doubtless in affirmance of this general principle that the Legislature of California adopted as part of its probate law the following section:

"Section 101. All acts of an executor or administrator as such, before the revocation of his letters testamentary, shall be as valid, to all intents and purposes, as if such executor or administrator had continued lawfully to execute the duties of his trust."

2 Hitt. Genl. Laws, 5799.

Attention is again respectfully called to the fact that there is no pretence that the debts which were allowed and approved by the probate court were not just and legal; nor is there any allegation whatever tending to impeach the orders of the court directing the sales to pay these debts. The debts had to be paid whether the will was forged or not. It was immaterial to creditors whether it was a case of testacy or intestacy. That were important only in a contest between the heirs and devisees. The above section extracted from the statute clearly indicates that the legislature intended, in case of the revocation of letters testamentary, that the administration *pro tanto* should stand undisturbed, and that the regular proceedings up to that time should stand unaffected, especially as to strangers and purchasers, under the orders of the court, regular and valid upon their face. The letters testamentary having issued October 8th, 1860, and this bill not having been filed till December 9th, 1869, the acts of administration regularly done for a period of nine years are sought to be affected. This cannot now be done against these defendants.

See Benson, Admr., vs. Rice, 2 Nott & McC., 577.
Bradford vs. Boudinot, 3 Wash. C. C. R., 122.
Raglan vs. Green, 14 Sme. & Mar., 195.
Wright vs. Beck, 10 Ib., 277.

IV.

The complainants are non-resident foreigners, and are, therefore, incapable of taking or holding property in California.

At common law an alien cannot acquire title to real estate by descent or other mere operation of law.

By the 17th section of the 1st article of the constitution of that State this disability was removed as to aliens who were *bona fide* residents of the State. These principles were applied in the case of *Farrell and Wife vs. Enwright*, (12 Cal. Rep., 450,) and an estate of a decedent was held to pass wholly to a brother who, though an alien, was a *bona fide* resident, to the exclusion of another brother, who was a non-resident. It was held that the subsequent coming and residence of the latter in the State did not change the rule.

Subsequently, however, a more liberal policy was pursued by the State, and practically ten years given the non-resident alien heir to come forward and claim either the estate or the proceeds. The statute in that behalf is as follows:

"An act relative to escheated estates, approved April 19, 1856.

"The People of the State of California, represented in Senate and Assembly, do enact as follows:

"Section 1. Aliens shall hereafter inherit and hold by inheritance real and personal estate in as full a manner as though they were native-born citizens of this or the United States, *provided*, that no non-resident foreigner or foreigners shall hold or enjoy any real estate situated within the limits of the State of California five

years after the time such non-resident foreigner or foreigners shall inherit the same; but in case such non-resident foreigner or foreigners do not appear or claim such estate within the period in this section before mentioned, then such estate shall be sold upon information of the attorney-general, according to law, and the proceeds deposited in the treasury of said State for the benefit of such non-resident foreigner or foreigners, or their legal representatives, to be paid to them by the treasurer of said State at any time within five years thereafter, when such non-resident foreigner or foreigners, or their representatives, shall produce evidence to the satisfaction of the treasurer and controller of State that such foreigner or foreigners are the legal heirs to, and entitled to inherit, such estate, which evidence, together with the joint order of said treasurer and controller, shall be placed on file in the office of the treasurer and shall be to him a voucher for any payments made by him under the provisions of this act; and in the event that such non-resident foreigner or foreigners do not appear or claim said estate or proceeds and produce said evidence within said extended term of five years, then said estate or proceeds shall be and become the property of the State, and shall be by the treasurer of the State placed to the credit of the school fund.

"Sec. 2. All acts and parts of acts conflicting with the provisions of this act are hereby repealed."

Stat. of California, 1856, pp. 137, 138.

The first clause of the proviso is an absolute prohibition of non-resident foreigners to hold or enjoy such property after five years. It is true that though under the

liberal policy of the State he may come within the second five years and claim the proceeds; but the prohibition to hold the property itself after the first five years is complete. And upon the failure within the second five years to claim "the estate or proceeds," "then the estate or proceeds shall be and become the property of the State."

The facts alleged in the complaint bring the complainants directly within this statute. The death of Mr. Broderick occurred on the 16th of September, 1869. The complainants have never yet been in the State, but through their solicitors, filed the bill of complaint on the 16th December, 1869, never having previously appeared or made any claim for said estate or the proceeds.

There are also other statutes of California relating to escheated estates, but they have no special bearing on this case.

1 Hitt. General Laws, 2593, et seq.

If the complainants were in possession, they could probably hold as against all except the State, and even against the State until office found. But they are out of possession. They seek to obtain possession of what they cannot hold, and in such case the objection of alienage is good, without office found.

Calvin's case, 7 Coke, 16.
Coke upon Litt., 129 b.
1 Bac. Ab., tit. Alien, D.
Com. Dig., " " C., 5.
Vin. Ab., " " C. H.
Dyer's Ret., 2 b.
Story Eq. Pl., p. 596, sec. 724.

Sewall vs. Lee, 9 Mass., 366–7 and note citing cases. (Rand's ed.)
Fairfax's devisee vs. Hunter, lessee, 7 Cranch, 620.
Farrell vs. English, 12 Cal., 450

These views show that the complainants have no right, title, or interest whatever in the property; and upon this ground the decree of the court below should also be affirmed.

Point relied on by complainants in the court below.

The complainants attempted in the court below to draw support from a statute of the State of California entitled "An act amendatory of an act entitled an act amendatory of an act and supplementary to an act concerning escheated estates, passed May fourth, eighteen hundred and fifty-two, approved April thirtieth, eighteen hundred and fifty-five." Approved March 3d, 1862.

It is respectfully submitted that this statute has no bearing on the case, for the following reasons:

1st. It merely applies to *escheated estates*, and is intended to facilitate the State in proceedings to reduce the property to its possession.

2d. The new jurisdiction given to the district courts of the State makes them *quo ad hoc* courts of probate. To that extent they are to exercise a limited and special jurisdiction. The courts of common pleas in Ohio once had, in addition to their general jurisdiction, probate powers, but the same court as a court of general jurisdiction could exercise no powers over the estates of deceased

persons. When sitting as courts of probate they were as limited and special as if they exercised no other power.

See Frazier vs. Frazier, 17 Ohio R., 261.
Joseph Hunter's Will, 6 Ib., 501–2.
Ludlow vs. Johnson, 3 Ib., 553.

3d. It is, to say the least, very doubtful whether that act does not violate the State constitution, which makes the probate court a constitutional court, and defines the powers of the courts generally.

See Art. VI., Con. of Cal.
Zander vs. Coe, 5 Cal., 230.
Hudson vs. Caulfield, 3 Id., 387.
Pond vs. Pond., 10 Id., 501.
Matter of Bowen's Will, 34 Cal., 689.

The original section 6, art. VI. of the constitution, gave the district courts jurisdiction to try issues of fact joined in the probate court, but that section as amended and ratified September 3, 1862, omits that clause, and in respect to this amended constitution the Supreme Court of California uses the following language: "This is a comprehensive grant of probate jurisdiction, and as there is nothing in the article granting concurrent jurisdiction, the grant to the probate court must be held exclusive."

Matter of Will of Bowen, 34 Cal., 689.

4th. This will was probated October 8, 1860, and the order of sale was made on the 7th November, 1861.

The statute referred to was not passed until March 3d, 1862. It is not to be construed as retrospective and af-

fecting acts of administration already passed, but as applying only to future cases.

See Gates vs. Salmon, 28 Cal. R , 321.
Peck vs. Vanderberg, 30 Id., 1.
Peck vs. Curtis, 31 Id., 309.
Dwarris on Stats., 536–540.

5th. This state statute cannot affect the equitable jurisdiction of the Circuit Court of the United States. The state legislature can neither add to, modify, or take away any of the equitable powers of the courts of the United States.

Gordon vs. Hobart, 2 Sumner, 403–5.
Fletcher vs. Morey, 2 Story, 567.
Robinson vs. Campbell, 3 Wheat., 222.
U.S. vs. Horsland, 4 Id., 115.
Mayer vs. Faulrod, 4 Wash. C. C. R., 355.
U. S. vs. Wonson, 1 Gall., 18.
Barker vs. Biddle, 1 Bald., 405.

The above case of *Robinson* vs. *Campbell*, explicitly meets the point. The court says (p. 222):

"The remedies in the courts of the United States are to be had at common law or in equity, not according to the practice of the state courts, but according to the principles of common law and equity as distinguished and defined in that country from which we derive our knowledge of their principles."

So in *Steamboat Orleans* vs. *Phœbus*, 11 Pet., 183, the following language is used:

"The local law can never confer jurisdiction on the courts of the United States. They can only furnish

rules to ascertain the rights of parties; and thus assist in the administration of the proper remedies where the jurisdiction is vested by the laws of the United States."

6th. The statute referred to gives no power, even in cases of escheat, to set aside sales made under order of the court. It does not supersede administration. Debts must be paid whether the decedent died testate or intestate; whether there be heirs, devisees, or a failure of both and a consequent escheat.

The proceedings on the part of the State must necessarily apply to the ultimate distribution of the property after payment of the debts. It is, practically, a contest for the heirship.

Here the defendants are indifferent persons to such a contest; they are simply purchasers at a judicial sale ordered to pay the debts, &c.

It is respectfully submitted that the decree of the Circuit Court is correct for each and all of the reasons above assigned, and should be affirmed in all things.

S. M. WILSON,

JANUARY, 1875. *Sol. and Counsel for Appellees.*